1859.

SUPREME COURT OF THE UNITED STATES.

No. 134.

JOHN S. BUCKINGHAM AND MARK BUCKINGHAM, APPELLANTS,

vs.

NATHANIEL C. McLEAN, ASSIGNEE IN BANKRUPTCY OF JOHN MAHARD, Jr.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF OHIO.

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Pleas begun and held in the city of Columbus, in the district of Ohio, on the second Monday in the month of November, in the year of our Lord one thousand eight hundred and forty-six, and of the independence of the United States of America the 71st, before the honorable John McLean and the honorable Humphrey H. Leavitt, judges of the circuit court of the United States, in and for the seventh circuit and district of Ohio.

Among the proceedings had were the following, to wit:

NATHANIEL C. MCLEAN, assignee in bankruptcy of the effects of John Mahard, jun., complainant,
vs.
THE PRESIDENT, Directors, and Company of the Lafayette Bank of Cincinnati et al., defendants.
} In chancery.

Be it remembered, that heretofore, to wit, on the fifth day of January, in the year of our Lord one thousand eight hundred and forty-three, came the said complainant, by his solicitors, and filed in the clerk's office of said court a certain bill in chancery in the words and figures following, to wit:

To the judges of the circuit court of the United States, for the 7th circuit and district of Ohio.

NATHANIEL C. MCLEAN, assignee in bankruptcy of the effects of John Mahard, jr., complainant,
vs.
THE PRESIDENT, Directors, and Company of the Lafayette Bank of Cincinnati; the President, Directors, and Company of the Northern Bank of Kentucky; Andrew Johnson; John L. Buckingham; Mark Buckingham; the Ohio Life Insurance and Trust Company; the President, Directors, and Company of the Bank of the United States, incorporated by the State of Pennsylvania; the President, Directors, and Company of the Commercial Bank of Cincinnati; the President, Directors, and Company of the Franklin Bank of Cincinnati; James Dundas, Mordecai D. Lewis, Samuel W. Jones, Robert L. Pitfield, and Robert Howell, assignees, &c.; John Mahard, sr., John McLaughlin, George Milne, and James Keith, partners, doing business in the firm name of Geo. Milne & Co., Charles B. Dyer, Frederick Trow, John C. Avery, late sheriff, and John H. Gerard, present sheriff of Hamilton county, defendants.

Your petitioner, Nathaniel C. McLean, respectfully shows, that on the 27th day of May, A. D. 1842, John Mahard, jr., of the county of Hamilton, and State of Ohio, filed his petition and schedules in the district court of Ohio, praying to be declared bankrupt, according to the provisions of the act of Congress in such case made and provided; and that afterwards, to wit, on the 20th day of July, A. D. 1842, the said Mahard was by decree of said district court declared bankrupt, and your petitioner then and there duly appointed assignee of his effects; a copy of which said decree and certificate of said appointment of your petitioner as assignee are hereto attached, numbered one and two, and made parts of this bill.

That on the 12th day of August, A. D. 1842, William Mahard, of said county, also filed his petition and schedules in said court, praying in like manner to be declared bankrupt, according to the provisions of said act of Congress; that, as your petitioner is informed, the said John Mahard, jr., and William Mahard, had been doing business for some time prior to the filing of said petitions, in the cities of Cincinnati and New Orleans, in the latter city under the firm name of Mahard and Brother, and in the former city under the firm name of J. and W. Mahard. Your petitioner further shows, that on the seventh day of December, A. D. 1841, by deed of that date, in which Mary K., wife of said John, united for the purpose of relinquishing her right and dower in said mortgaged premises, the said John Mahard, jr., mortgaged to the President and Directors of the Lafayette Bank of Cincinnati, the following described real estate belonging to the said John, situate in said county of Hamilton, viz., all that tract of land in section 22, township 4, and fractional range 2, Miami purchase, to be laid off the north side of the southeast quarter of said section, by a line running parallel with the north boundary of said quarter section from east to west, at such a distance south from the said north boundary as to include one hundred and twenty (120) acres, except ten (10) acres sold to S. W. Phelps off the east end of said tract, which parcel of land was deeded to said John Mahard, jr., by deed recorded in book No. 58, page 437, of Hamilton county records.

Also all that other tract in same section, township, and fractional range, being the southwest quarter of said section, except the forfeit in the northeast corner, and also the lot of nine (9) acres and seventy-three (73) square rods, conveyed by William McIntire to A. Martin, by deed recorded in the records of said county, containing after said reservations, one hundred and twenty-three (123) acres three rods and twenty and one-half (20½) perches, the same conveyed to the said John Mahard, jr., by said McIntire, by deed recorded in book No. 41, page 478, of said record; also a tract of one (1) acre one rood and four (4) perches, adjoining the last described tract, conveyed to said John Mahard, jr., by said Martin, by deed recorded in book No. 50, page 456, of said records; also that other tract in the same township and fractional range, known as the forfeiture of quarter section eighteen, (18) in the plat of quarter sections, lying in a regular square in the northeast corner of said quarter section, and containing twenty-six and two-thirds

acres, conveyed to the said John Mahard, jr., by Spicer Ferguson by deed recorded in book No. 49, page 404, of said records. Also that other tract known as the forfeiture of the northwest quarter of section No. 21, in the same township and fractional range, being a tract of twenty-six and two-thirds (26⅔) acres, in the northeast corner of said quarter section, laid off in a regular square, conveyed to the said John Mahard, jr., by B. Jones, by deed recorded in book No. 58, page 543, of said records; which mortgage purports to have been given to secure the sum of fifteen thousand (15,000) dollars, evidenced by two promissory notes of same date of said mortgage, made by said firm of J. & W. Mahard, one for five thousand (5,000) dollars, payable in ninety-five days from date to the order of Andrew Johnson, and by him endorsed, and the other for ten thousand (10,000) dollars, payable ninety-five days after date to the order of John McLaughlin, and by him endorsed; that said mortgage was recorded on the thirtieth (30th) day of January, A. D. 1842, in book No. 83, page 206, of said records.

Your petitioner further shows, that on the 16th day of February, 1842, by deed of that date, the said John Mahard, jr., mortgaged to said Andrew Johnson, all his interest and estate in lot No. 460, on the original plan of Cincinnati, being the premises conveyed to the said John Mabard, jr., by two deeds, one recorded in book No. 29, page 251, and the other in book No. 62, page 236, of said records, excepting about 23 feet on Water street, about 100 feet deep, which said John Mahard, jr., had previously conveyed to said William Mahard. The alleged object of which last mortgage was to secure said Johnson, as endorser of two drafts and a note, as follows: Draft dated 29th of November, 1841, for $3,500, drawn by said John McLaughlin on Mahard and Brother, payable four months after date to order of J. and W. Mahard, and endorsed by them and said Johnson; also another draft for $3,420, dated 15th December, 1841, also drawn by said McLaughlin on Mahard & Brother, and payable in sixty days after date to the order of J. & W. Mahard, and endorsed by them and by the said Johnson; and also a promissory note for $, dated January 24, 1842, made by said J. & W. Mahard, payable 90 days after date to the order of said Johnson, and by him endorsed—all which paper, as is alleged, was endorsed by said Johnson for the sole accommodation of said John and William Mahard, who procured the same to be discounted, and received the proceeds. That said last mortgage was recorded on the 16th day of February, 1842, in Book No. 83, page 325–'6 of said records.

That on the 21st day of February, 1842, by two mortgage deeds of that date, in which Mary K., wife of the said John Mahard, jr., united for the purpose of relinquishing her right of dower in the mortgaged premises, the said John Mahard, jr., by one of said mortgage deeds, mortgaged to Mark Buckingham his interest in said in-lot No. 460, and also in in-lot No. 404, in Cincinnati, to secure the sum of $1,304 81, and by the other of said mortgage deeds his interest in the same lots to the said Mark Buckingham and John S. Buckingham, to secure to the said Mark and John S. the sum of $9,344 37, evidenced by two pro-

missory notes made by the said J. and W. Mahard, one for [illegible] dated 27th of November, 1838, and the other for $7,244 37, dated August 1st, 1841, as is alleged; which said mortgages were recorded the 21st day of February, 1842, in book No. 83, page 344 of said records. That on the 18th day of March, 1842, said John Mahard, jr., as your petitioner is informed, by bill of sale of that date, conveyed to the said Andrew Johnson a large amount of personal property, chiefly live stock, to secure said Johnson on his liabilities for the said J and W. Mahard, which property, by agreement, as is said, was left in the possession of said John Mahard, jr.

That on the 8th day of April, 1842, as your petitioner is informed, the said John Mahard, jr., for himself, and by virtue of a power of attorney, executed by him for his brother, the said William Mahard, which power your petitioner charges was executed without the knowledge or consent of said William, and therefore fraudulent and void, confessed a judgment against himself and the said William Mahard in favor of the said John S. Buckingham, for the sum of $14,800 damages, besides costs in the supreme court of Ohio, then sitting in and for said county of Hamilton, when in fact no such sum was due and owing by said Mahards, or either of them, to the said John S. Buckingham. That afterwards, as your petitioner is informed, the said John S. Buckingham sued out an execution on said judgment, directed to John C. Avery, then sheriff of said county of Hamilton, and caused the same on the 21st day of May, 1842, to be levied on certain personal property, chiefly live stock, being the same property described in said bill of sale to Andrew Johnson, and had the same advertised for sale. That on the 7th day of June, 1842, before the day fixed for the sale of said property, the said Andrew Johnson, together with the President, Directors and Company of the Northern Bank of Kentucky, to whom the paper of said Mahards endorsed by said Johnson, to secure which said bill of sale was executed, or some part thereof, had been registered, filed their bill on the chancery side of the superior court of Cincinnati, setting forth the execution of said bill of sale, the protest of some of said papers, that no provision was made for the payment of any of it by Mahards, and that they were utterly insolvent, and prayed that said Buckingham, and said Avery, sheriff, be enjoined from proceeding to sell or interfering in any way with said property; and that a receiver be appointed, &c. That such proceedings were subsequently had in said chancery suit as that the said property was sold by order of said court, and the proceeds, amounting to about $1300, as your petitioner is informed, brought into said court for distribution. That at the October term, 1842, of said court, as your petitioner is informed, said cause came on for hearing, and said court was of the opinion that the equity of the case was with the said John S. Buckingham, and decreed that said proceeds be paid over to him in thirty days from the rising of said court, which thirty days will expire on the 6th day of January, 1843.

Your petitioner further shows, that on the third day of August, 1842, the President, Directors, & Company of the Lafayette Bank of Cin-

filed their petition on the chancery side of the said superior court of Cincinnati to obtain an order for the sale of the property mortgaged to them by the said John Mahard, jr., herein before described; that at the October term of 1842 of said court a decree was rendered, finding the amount due said Bank, and directing that said mortgaged premises be sold, and the proceeds, or so much as may be necessary for that purpose, be applied to the payment of the amount so found due said bank, and that a copy of said order is now in the hands of John H. Gerard, now sheriff of said county of Hamilton, and special master commissioner in said cause, directing him to sell said premises, and report his proceedings to the January term, 1843, of said superior court of Cincinnati, and he is proceeding to execute said order.

Your petitioner further shows, that John Mahard, sen., on the 17th day of October, 1842, filed his bill on the chancery side of the said superior court of Cincinnati, against your petitioner as assignee as aforesaid, and others, the object of which bill is to subject $2,000 in shares of the Franklin Bank of Cincinnati, owned by said John Mahard, jr., to the payment of the sum of $1,130 $\frac{59}{100}$, besides cost, the amount of a judgment in the supreme court of Hamilton county against said John Mahard, sr., and said John Mahard, jr., in which said John Mahard, senr., claims to have been surety merely for said John Mahard, jr., and alleges he has paid the same as such surety; and also setting up some claim by virtue of the lien of said judgment to the real estate of the said John Mahard, jr., all which amount in the stock of said bank, as well as by $5,000 worth besides, making in all $7,000 worth which the said John Mahard, jr., obtained from Ferdinand Bodman; to all of which bank stock said Franklin Bank of Cincinnati sets up some claim, as your petitioner is informed, as well as said real estate your petitioner claims as assignee of said John Mahard, jr.

Your petitioner further shows, that the following persons have also filed, on the chancery side of said superior court of Cincinnati, setting forth pretended liens, by mortgage or otherwise, on the property of the said John Mahard, jr., and seeking to divert the same from an equitable distribution under said Bankrupt law; all which said liens, as your petitioner believes and charges, were created after the taking effect of said law, viz., the President, Directors, and Company of the Commercial Bank of Cincinnati, for themselves, and George Milne and James Keith, partners, doing business in the firm name of Geo. Milne & Co.; the Ohio Life Insurance and Trust Company, and Andrew Johnson, and the said John Mahard, sen. That the said John S. and Mark Buckingham, with like claim and interest, have also filed a bill on the chancery side of the court of common pleas of said county of Hamilton; all which said suits are now pending in said courts.

Your petitioner files herewith, and makes part of this bill, a copy of schedule B, accompanying said petition in bankruptcy, of the said John Mahard, jr., and further shows, that said schedule B, purporting to give a true account of the assets and property of the said John at the time of his application, contains, among other things, all the real estate

embraced in said mortgage herein before referred to, and also the personal property embraced in said bill of sale and levy.

Your petitioner further represents, that said John Mahard, jr., and William Mahard, were doing business until recently, as commission merchants, having a house in New Orleans, and one in Cincinnati, and that they also did a large business on their own account; that their partnership assets, as your petitioner is informed and believes, is of little or no value; that the individual property of John Mahard, jr., so mortgaged by him, and so levied on as aforesaid, was of great value, and comprised all, or nearly all, the property he owned; that there are a large number of the creditors of said Mahards, not embraced in said mortgage, &c., and whose claims are wholly unprovided for. Your petitioner expressly charges, that whilst so engaged in business as aforesaid, immediately preceding the execution of said first mortgage by the said John Mahard, jr., to the said President, Directors, and Company of the Lafayette Bank of Cincinnati, the said Mahards failed, and stopped payments, and suffered their paper to be protested; and were in fact at the time of executing said mortgage greatly insolvent, and that said mortgage, and all made thereafter by the said John Mahard, jr., as well as said bill of sale to said Andrew Johnson, and the confession of said judgment in favor of the said John S. Buckingham, and each of them, were acts done in contemplation of bankruptcy, and intended to prefer one creditor to another, in fraud of the Bankrupt law of the United States. That said mortgage and said judgment creditor, as your petitioner is informed and believes, knew at the times said mortgages were executed respectively, and said judgment confessed, that said Mahards were in failing circumstances; and their object and interest was to secure their own claims in preference to other creditors.

Wherefore your petitioner avers and claims, that each and all of the aforesaid transfers or incumbrances of property by the said John Mahard, jr., as well as the confession of said judgment, were fraudulent, and void in law, and conferred no right on the said mortgagees or the said judgment, creditor nor upon any one claiming under any of them, to interfere in any way with the said real and personal estate of the said John Mahard, jr.; but that the same passed by decree of said district court to your petitioner as his assignee in bankruptcy, who has the exclusive right to control and dispose of the same.

Your petitioner, therefore, being without remedy at law, prays that the writ of subpœna may issue, and that the said the President, Directors, and Company of the Lafayette Bank of Cincinnati; the President, Directors, and Company of the Northern Bank of Kentucky, Andrew Johnson, John S. Buckingham, and Mark Buckingham, John Mahard, sr., the Ohio Life Insurance and Trust Company, and John McLaughlin, the President, Directors, and Company of the Commercial Bank of Cincinnati, and George Milne and James Keith, partners, doing business in the firm name of Geo. Milne & Co., as well as the following persons, who claim some interest in said property by virtue of said mortgages, or otherwise, viz., the President, Directors, and Company of the Bank of the United States, incorporated by the State of Pennsylvania;

President, Directors, and Company of the Franklin Bank of Cincinnati; James Dundas, Mordecai D. Lewis, Sam'l W. Jones, Robert L. Pitfield and Robert Howell, assignees, &c., Charles B. Dyer and Frederick Trow, William McIntire, and also John C. Avery, late sheriff, and John H. Gerard, present sheriff of Hamilton county, be made defendants to this bill, and severally answer under oath all and singular the premises, and particularly that they each set forth the nature and amount of their respective claims, and exhibit copies of any written instruments or records by which the same are evidenced; that the said the President, Directors, and Company of the Lafayette Bank of Cincinnati; the President, Directors, and Company of the Northern Bank of Kentucky, Andrew Johnson, and John S. Buckingham, Mark Buckingham, John Mahard, sen.; the Ohio Life Insurance and Trust Company, and John McLaughlin, the President, Directors, and Company of the Commecial Bank of Cincinnati, and George Milne and James Keith, partners, &c., as Geo. Milne & Co., be enjoined from proceeding in their said suits in chancery, and that they come into this court and litigate whatever claims they have to preference over other creditors in this suit, and that the said John C. Avery, late sheriff, and John H. Gerard, present sheriff of said county of Hamilton, be enjoined, the former from paying over to the said John S. Buckingham the proceeds of said sale of personal property, and the latter from proceeding to sell said mortgaged premises; and that on final hearing this court will decree that the proceeds of said sale of personal property, now in the hands of said John C. Avery, be paid to your petitioner; that said defendants be perpetually enjoined from setting up any claims to said real or personal estate of the said John Mahard, jr., or the proceeds thereof under or by virtue of any of said mortgages, said bill of sale, or said judgment and levy; that the same may be declared null and void; that your petitioner's right to said real property and the proceeds of said personal property may be confirmed and protected, and that he have such other and further relief as may seem right and equitable.

N. C. McLEAN,
Assignee of John Mahard, jr.
WRIGHT, COFFIN & MINER,
And BROWN & McLEAN,
Complainants' Solicitors.

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

I, Nathaniel C. McLean, being duly sworn, depose and say, that all the several matters and things which are stated in the foregoing bill, as from the information of others, I believe to be true; and that all the several other matters and things therein set forth, are true in substance and in fact. N. C. McLEAN.

Sworn and subscribed before me, at Cincinnati, Ohio, this 26th December 1842, in witness of which I hereto affix my seal and subscribe my name. CRAFTS J. WRIGHT, [SEAL.]
Notary Public.

On which said bill was endorsed the allowance of an injunction in the words and figures following, to wit: "Let a writ of injunction issue as prayed for in the within bill, to continue in force till the next term of the circuit court of the United States, for the District of Ohio,

H. H. LEAVITT, *District Judge, &c.*

And thereupon the following writs of subpœna were issued against the several defendants named in said bill, to wit:

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting: We command you to summon the President, Directors, and Company of the Lafayette Bank of Cincinnati, if they be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[SEAL.]

Attest: WM. MINER, *Clerk.*

Memoranda.—The defendants are to enter their appearance in the suit, in the clerk's office, on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk.*

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit: Served the within writ on the president of the Lafayette Bank of Cincinnati, personally by copy, and also read to him the writ of injunction, and left a copy of the same and bill, the 9th January, 1843.

JOHN McELVAIN, *Marshal,*
By JOHN BURGOYNE, *Dep'y.*

UNITED STATES OF AMERICA, *district of Ohio, ss.*

To the marshal of said district, greeting:

We command you to summon the President, Directors, and Company of the Northern Bank of Kentucky, if they be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ:

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America:

[SEAL.]

Attest: WM. MINER, *Clerk,*

Memoranda.—The defendants are to enter their appearance in the suit in the clerk's office, on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

"Served the within writ on Messrs. Chase and Ball, who stated they were counsel for the Northern Bank of Kentucky, by leaving with each of them copies of this writ, and explained to them the writ of injunction and the bill, they declining to acknowledge service, this 7th January, 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA, *district of Ohio, ss.*

To the marshal of said district, greeting:

We command you to summon Andrew Johnson, citizen of and resident in the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United [SEAL.] States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit in the clerk's office, on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

The within defendant not found in my bailiwick, January 7th, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA, *district of Ohio, ss.*

To the marshal of said district, greeting:

We command you to summon John S. Buckingham, a citizen of and resident in the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the honorable H. H.

Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[SEAL.]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit: Service acknowledged on J. S. Buckingham.

W. M. CORRY, *Sol*.

Service acknowledged as above.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA, *district of Ohio, ss.*

To the marshal of said district, greeting:

We command you to summon Mark Buckingham, a citizen of and resident in the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the hon. Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[SEAL.]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on the within named defendant personally by copy, and also read to him the writ of injunction, and explained the bill, this 7th January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon the Ohio Life Insurance and Trust Company, if they be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the 1st Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[L. S.]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendants are to enter their appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on the President of the Ohio Life Insurance and Trust Company personally, by copy, and read to him the writ of injunction and bill, the 9th day of January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
Ohio district, ss.

To the marshal of said district, greeting:

We command you to summon the President, Directors, and Company of the Bank of the United States, incorporated by the State of Pennsylvania, if they be found in your bailiwick, to be and appear before the judge of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[L. S.]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendants are to enter their appearance in the suit in the clerk's office on or [before] the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on Timothy Kirby, agent for the Bank of the United States personally, by copy, who took a copy of the writ of injunction and bill, this 7th day of January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon the President, Directors, and Company of the Commercial Bank of Cincinnati, if they be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of
[L. S.] the independence of the United States of America.

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendants are to enter their appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on the President of the Commercial Bank of Cincinnati personally by copy, and also read the writ of injunction and bill to him, this 9th day of January, 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon the President, Directors, and Company of the Franklin Bank, of Cincinnati if they be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the 1st Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt,

one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of
[L. S.] the independence of the United States of America.

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendants are to enter their appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on the President of the Franklin Bank of Cincinnati personally, by copy, and also read to him the writ of injunction and bill, this 7th January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon James Dundas, citizen of and resident in the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of
[SEAL.] the independence of the United States of America.

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

Attest: WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on Timothy Kirby, agent for the within named James Dundas, personally, by copy, this 7th day of January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon Mordecai D. Lewis, citizen of and resident in the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.
[SEAL.]
Attest: WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ personally, by copy, on Timothy Kirby, agent for the within named Mordecai D. Lewis, this 7th January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon Samuel W. Jones, a citizen of and resident in the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.
[SEAL.]
Attest. WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ personally, by copy, on Timothy Kirby, agent of the within named Samuel W. Jones, this 7th January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon Robert L. Pitfield and Robert Howell, assignees, &c., citizens of and residents in the State of Ohio, if they be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[SEAL.]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendants are to enter their appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on Timothy Kirby, agent of the within named Robert L. Pitfield and Robert Howell, assignees, &c., personally, by copy, the 7th January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon John Mahard, sr., citizen of and resident in the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by

the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witnes the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[SEAL.]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on the within named defendant personally, by copy, this 9th January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon John McLaughlin, citizen of and resident in the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[SEAL.]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on the within named defendant personally, by copy, and also read to him the writ of injunction and bill, this 7th January, 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

United States of America,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon George Milne and James Keith, partners, doing business in the firm name of George Milne & Co., citizens of, and residents in, the State of Ohio, if they be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[L. s.]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendants are to enter their appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on the within named defendants personally, by copy, and also read to them the writ of injunction and bill, January 7th, 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

United States of America,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon Charles B. Dyer, citizen of, and resident in, the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[L. s.]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit

in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, viz.:

January the 7th, 1843, served the within writ personally by copy on Charles B. Dyer, and also read to the said Dyer the writ of injunction and bill.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon Frederick Trow, citizen of, and resident in, the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[L. S.]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

Attest: WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ personally, by copy and by reading the writ of injunction and bill, on the within named defendant, this 9th January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,
District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon John C. Avery, late sheriff, citizen of, and resident in, the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the 1st Monday in the month of February next, to answer Nathaniel C. McLean

assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[SEAL]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on the within named defendant personally, by copy, and also the writ of injunction and bill, this 7th January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

UNITED STATES OF AMERICA,

District of Ohio, ss.

To the marshal of said district, greeting:

We command you to summon John H. Gerrard, sheriff of Hamilton county, citizen of, and resident in, the State of Ohio, if he be found in your bailiwick, to be and appear before the judges of the 7th circuit court of the United States, for the district of Ohio aforesaid, at Cincinnati, on the first Monday in the month of February next, to answer Nathaniel C. McLean, assignee of John Mahard, jr., of a certain bill in chancery, upon which an injunction has been allowed by the hon. H. H. Leavitt, one of the judges of said court. Hereof fail not, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and in the 67th year of the independence of the United States of America.

[L. S.]

Attest: WM. MINER, *Clerk*.

Memoranda.—The defendant is to enter his appearance in the suit in the clerk's office on or before the day at which the writ is returnable, otherwise the bill may be taken pro confesso.

WM. MINER, *Clerk*.

Upon which said writ the marshal, to whom the same was in form aforesaid directed, afterwards made the following return, to wit:

Served the within writ on the within named defendant personally, by copy, and also read to him the writ of injunction and bill, this 7th January, A. D. 1843.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

And also on said fifth day of January, in the year aforesaid, a writ of injunction was issued herein, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

To the President, Directors, and Company of the Lafayette Bank of Cincinnati, the President, Directors, and Company of the Northern Bank of Kentucky, Andrew Johnson, John S. Buckingham, Mark Buckingham, the Ohio Life Insurance and Trust Company, the President, Directors, and Company of the United States Bank, incorporated by the State of Pennsylvania, the President, Directors, and Company of the Commercial Bank of Cincinnati, the President, Directions, and Company of the Franklin Bank of Cincinnati, James Dundas, Mordecai D. Lewis, Samuel W. Jones, Robert L. Pitfield, and Robert Howell, assignees, &c., John Mahard, sen., John McLaughlin, George Milne, and James Keith, partners, doing business in the firm name of George Milne & Co., Charles B. Dyer, Frederick Trow, John C. Avery, late sheriff, and John S. Gerrard, present sheriff of Hamilton county, and to all and singular your counsellors, solicitors, attorneys, and agents, greeting:

We firmly enjoin and command you, and every of you, that from and after the receipt or notice of this, our writ of injunction, by you, or any of you had, that you, and every of you, do, from henceforth, wholly and entirely surcease and desist from prosecuting all and any of the suits in chancery mentioned in the bill of complaint of N. C. McLean, assignee of John Mahard, jr., against you, or any of you, and that you come into court and litigate whatever claims you have in the premises; and particularly that the said John C. Avery, late sheriff, and John H. Gerrard, present sheriff of Hamilton county, Ohio, desist wholly and entirely, the former from paying over to John S. Buckingham the proceeds of the sale of the personal property in the bill mentioned, and that the latter desist from proceeding to sell the mortgaged premises described in said bill, until you shall appear and answer said bill, and our court shall make further order thereupon; and hereof you are not to fail under the full penalty of the law.

Witness the honorable Roger B. Taney, chief justice of the United States, this 5th day of January, 1843, and of the independence of the United States of America the 67th.
[L. S.]

Attest: WM. MINER, *Clerk*.

And afterwards, to wit, on the first Monday of February, in the year of our Lord one thousand eight hundred and forty-three, came the marshal of said district, to whom said writ of injunction was in form aforesaid directed, and returned the same into the clerk's office of said court, with his return endorsed thereon, in the words and figures following, to wit:

Served the within writ personally by copy, on the 7th day of January, 1843, on the following named defendants, viz: Mark Buckingham,

Buckingham, John McLaughlin, John H. [illegible] county, John C. Avery, late sheriff of H. [illegible] on the 9th January, 1843, on Frederick Trow; and on the 10th, on John Mahard, sen., each personally by copy; and on the 9th January, 1843, served the within writ personally by copy on the president of the Ohio Life Insurance and Trust Company, at their banking house; also on the president of the Commercial Bank of Cincinnati, at their banking house; also on the president of the Franklin Bank of Cincinnati, at their banking house; also on the president of the Lafayette Bank of Cincinnati, at their banking house, with whom I left a copy of this writ of injunction, and the bill upon which this writ was allowed, or a copy of the same; and on the same day, viz., the 9th January, 1843, served the within writ personally, by copy, on Timothy Kirby, agent for Samuel W. Jones, James Dundas, Mordecai D. Lewis, Robert L. Pitfield, and Robert Howell, assignees, &c., the President, Directors, and Company of the Bank of the United States, incorporated by the State of Pennsylvania, with whom I left a copy of this writ of injunction, and also a copy of the bill upon which this writ was allowed; and on the 7th of January, A. D. 1843, served the within writ personally by copy on George Milne and James Heith, partners, doing business in the firm name of George Milne & Company; and on the 7th January, 1843, served the within writ on S. P. Chase and F. Ball, counsellors at law, who acknowledged they were counsel for the Northern Bank of Kentucky, by leaving with each of them a copy, they declining to acknowledge service; and Andrew Johnson not found, reported to be in Illinois.

JOHN McELVAIN, *Marshal*,
By JOHN BURGOYNE, *Deputy*.

And afterwards, to wit, on the first Monday in the month of February, in the year of our Lord eighteen hundred and forty-three, came the defendants, John S. Buckingham and Mark Buckingham, by William M. Corry, esq., their solicitor, and filed in the clerk's office of said court their several answers to the said bill of complaint, which said answers are respectively in the words and figures following, to wit:

Answer of J. S. Buckingham.

The separate answer of John S. Buckingham to the bill of complaint of Nathaniel C. McLean, assignee of John Mahard, jun., in the circuit court of Ohio.

This respondent, saving and reserving to himself all manner of benefit and advantage from the many errors and imperfections in the complainant's bill, for answer to the material part thereof says, that he admits it to be true, as therein alleged, that both John Mahard, junior, and William Mahard were doing business in the cities of New Orleans and Cincinnati, under the firm of J. & W. Mahard at the latter, and Mahard and Brother at the former place, for several years prior to the 26th May, A. D. 1842, as commission merchants and produce dealers. Respondent further admits the failure of both said firms as aforesaid, and that the said John Mahard, jr., was discharged from all his debts to the

amount of dollars; on the 20th [illegible] decree of this court, sitting in bankruptcy, [illegible] Mahard filed his petition in bankruptcy on the [illegible] August, 1842, which is still pending before this court for final hearing.

Respondent admits that the complainant has been appointed and is the assignee of John Mahard, jun., under a decree of the court aforesaid.

The respondent also admits that the said John Mahard, jr., on the 7th day of December, 1841, by deed of that date, with release of dower, mortgaged to the President and Directors of the Lafayette Bank of Cincinnati all the parcels of real estate which are particularly set forth and described in the said bill of complaint, and which several parcels of ground were conveyed to said Mahard by the several deeds of conveyance set forth by date, and the book and page of the Hamilton county records, where said deeds were recorded; the said mortgage is conditioned for the payment, on its face, of fifteen thousand dollars, evidenced by two promissory notes made by the said firm of J. & W. Mahard, one for five thousand dollars, ($5,000,) payable in ninety-five days from date, to the order of Andrew Johnson, and by him endorsed; and the other note for ten thousand dollars, ($10,000,) payable ninety-five days after date, to the order of John McLaughlin, and by him endorsed; and said mortgage was recorded on the 30th January, 1842, in book No. 83, page 206 of said records. Respondent admits that on the 16th February, 1842, the said John Mahard, jr., executed to one Andrew Johnson a mortgage, as stated in the bill aforesaid, conveying to said Johnson all the said Mahard's interest and estate in lot No. 460 on the original plan of Cincinnati, which mortgage was made to secure said Johnson as endorser of two drafts and a note, as follows, namely, draft for $3,500, dated November 29, 1841, drawn and endorsed as stated in the bill; another draft for $3,420, dated December 15, 1841, drawn and endorsed as stated in said bill, and one note for $, dated January 24, 1842, drawn and endorsed as stated in said bill; all of which paper was made, as respondent believes, for the benefit and accommodation of J. and W. Mahard.

Respondent admits that said mortgage was recorded on the 16th February, 1842, book 83, page 325, but respondent charges that the same was not delivered to said Johnson, or to any person for him, at the date of the record aforesaid; nor did said Johnson know any thing of the existence of said mortgage until after the date of February 21, 1842, as respondent believes. And he expressly charges that the said mortgage was afterwards cancelled by the said Andrew Johnson, under his hand and seal, on the 14th day of April, A. D. 1842, as will be seen by the original mortgage, ready to be shown to the court, and by the satisfaction thereof in full, entered upon the face of the record thereof by the recorder for Hamilton county; and respondent thereupon insists that the said mortgage is of no further validity in law or equity. Respondent further admits that on the 21st February, 1842, by two mortgage deeds of that date, the said John Mahard, jr., con-

brother, Mark Buckingham, his interest in
nati, to secure the payment of the sum of
thirteen hundred and four dollars and eighty-one cents, (1,304 81,) and by another mortgage of the same date, said Mahard, jr., conveyed to respondent and said Mark Buckingham his interest in the same lots, to secure them in the payment of the amount of $9,344 37, then due to them by two notes, dated respectively on the 27th November, 1838, and 1st August, 1841, which said mortgages are recorded the 21st day of February, 1842, in book 83, page 344, Hamilton county records.

Respondent admits that said John Mahard, jr., conveyed to Andrew Johnson by bill of sale, dated March 18, 1842, a large amount of personal property, chiefly live stock, which property, by agreement, was left in the possession of said John Mahard, jr., but that said conveyance was made to secure said Johnson, on his liabilities for said J. and W. Mahard, this respondent does not believe, but it was fraudulent, for the purpose of covering up the property from the creditors of John Mahard, jr., and the firms aforesaid.

Respondent admits that on the 8th April, 1842, the said John Mahard, jr., by virtue of a power of attorney, executed by him for himself and brother, William Mahard, confessed a judgment against himself and the said William Mahard, in favor of this defendant, for the sum of fourteen thousand eight hundred dollars damages, besides costs, in the supreme court of Ohio, then sitting in and for the said county of Hamilton. And this defendant further answering saith, that the said power of attorney was executed with the authority and consent of the said William Mahard, who, by a certain deed, under his hand and seal, dated the twentieth day of April, one thousand eight hundred and forty-two, duly recognised, ratified, and confirmed the said warrant of attorney. Respondent further answering says, that the said sum of fourteen thousand eight hundred dollars was, at the time of the confession of the said judgment and the date of the said power of attorney, justly due and owing, by the said J. and W. Mahard, to this respondent and Mark Buckingham, who was equally interested in the said debt; but the legal proceedings in reference to it were conducted in the name of this respondent for the sake of convenience, as this respondent was on the spot, and the said Mark Buckingham was at New Orleans. Respondent admits that execution was ordered out on said judgment at the instance of respondent, as mentioned in said bill, and that such proceedings were had thereon as therein set forth. And respondent admits that he and the said Mark Buckingham have filed a bill in the chancery side of the court of common pleas of said county of Hamilton, as set forth in the bill. And respondent further answering saith, that he does not know whether or not, immediately preceding the execution of the mortgage by the said John Mahard, jr., to the President, Directors, and Company of the Lafayette Bank of Cincinnati, as the said bill charges, the said Mahards failed and stopped payment, and suffered their paper to be protested, and were, in fact, at the time of executing said mortgage, greatly insolvent; but this respondent, on the contrary, believes

that at that time, and also on the 16th and [illegible]ary, 1842, when said mortgages were given, and on the 7th [illegible]42, when the said power of attorney was given to confess the judgment aforesaid, and also on the 20th April, 1842, when the same was ratified, and afterwards, the said Mahards fully believed that they were able to carry on their business as before. And this respondent believes that the confession of the said judgment, and the confirmation thereof, and the granting of the said mortgages to this respondent and the said Mark Buckingham, were not, nor was either of them, an act done in contemplation of bankruptcy, and that neither of the said acts was intended to prefer this respondent to other creditors, in fraud of the bankrupt laws of the United States. And respondent further answering says, that the said mortgages granted to him and to his brother, Mark Buckingham, were so granted on the demand, and urgent request and solicitation of them both, separately and earnestly made to John Mahard, jr., the business partner of the said houses of J. & W. Mahard and Mahard & Brother, at Cincinnati, to secure the sum therein mentioned, which was then justly due and owing to this respondent and the said Mark Buckingham.

And this respondent further answering says, that the said warrant of attorney was also given to this deponent upon his, this deponent's, urgent solicitation, and after repeated threats and demands on the part of this deponent; and that, unless the same had been given as aforesaid, this deponent would have sued the said John and William Mahard forthwith for the said debt of fourteen thousand eight hundred dollars. And this deponent further answering saith, that at the time when the said warrant of attorney was so given as aforesaid, the said John Mahard solemnly declared that he should be fully able to meet all his engagements; and this respondent believes that such was at that time the expectation of the said John and William Mahard, and that neither of them formed any intention to file a petition under the bankrupt act until long after the said judgment was confessed and ratified as aforesaid. And this respondent confided in the said representations of the said John Mahard, until about six months after the confession of the said judgment, when his, this respondent's, brother discovered that the said John Mahard was conducting his business unsatisfactorily, and thereupon caused the said execution to issue. And respondent further says, that he had no notice whatever, when the said mortgages to him and the said Mark Buckingham were granted by said Mahard, or when the said power of attorney was given or ratified as aforesaid, of any act of bankruptcy committed by the said John and William Mahard, or either of them, or of the intention of them, or of either of them, to take the benefit of the Bankrupt law of Congress entitled "an act to establish a uniform system of bankruptcy throughout the United States;" but, on the contrary thereof, this respondent expressly avers that the said John Mahard, junior, constantly insisted on his solvency and ability to meet all his engagements. Respondent further answering says, that it is true that the levy under the said judgment, made on

...joined by a writ from the superior court of Cincinnati, but the ...action was dissolved, and the property levied on under the said ...ment was subsequently sold, and that about $1,300, the nett proceeds, are in the hands of John C. Avery, late sheriff of Hamilton county, for the benefit of this respondent and the said Mark Buckingham, but the said sheriff has been enjoined by this bill and the proceedings in the present case. Respondent further says, that he has, by virtue of said judgment, levied on all the real estate set forth in said bill, as well as much other real estate not therein mentioned, and he claims the right, by virtue of the said levy, to subject the whole of the said real estate to this respondent's claims under the said judgment, divested of all liens and incumbrances which are satisfied or fraudulent. And this respondent prays to be hence dismissed, with his reasonable costs in this behalf most wrongfully sustained.

JOHN S. BUCKINGHAM.

STATE OF OHIO,
Hamilton county, ss.

Personally came before me, Ellwood Fisher, a master commissioner in chancery for the court of common pleas for said county, John S. Buckingham, the above respondent, and being sworn deposes and says, that the above answer is true in substance and in fact. Sworn to and subscribed before me this 28th January, 1843.

ELLWOOD FISHER,
Master Comm. Chancery, Ham. Comm. Pleas, Cinn., Ohio.

Answer of Mark Buckingham.

The separate answer of Mark Buckingham to the bill of complaint of Nathaniel McLean, assignee of John Mahard, jr., in the circuit court of Ohio. This respondent, saving and reserving to himself all manner of benefit and advantage from the many errors and imperfections in the complainant's bill, for answer to the material part thereof, says, that he admits it to be true, as therein alleged, that both John Mahard, jr., and William Mahard, were doing business at the cities of New Orleans and Cincinnati, under the firm of J. & W. Mahard at the latter, and Mahard & Brother at the former place, for several years prior to the 26th May, A. D. 1842, as commission merchants and produce dealers. Respondent further admits the failure of both said firms as aforesaid, and that the said John Mahard, jr., was discharged from all his debts to the amount of about dollars on the 20th October, 1842, by final decree of this court sitting in bankruptcy; and that the said William Mahard filed his petition in bankruptcy on the 12th August, 1842, which is still pending before this court for final hearing. Respondent admits that the complainant has been appointed, and is, the assignee of said John Mahard, jr., under a decree of the court aforesaid. The respondent also admits, that the said John Mahard, junior, on the seventh day of December, A. D. 1841, by deed of that date, with release of dower, mortgaged to the President and Directors of the

Lafayette Bank, of Cincinnati, all the par[illegible] estate which are particularly set forth and described in th[illegible] complaint, and which several parcels of ground were con[illegible] said Mahard by the several deeds of conveyance set forth by date, and the book and page of the Hamilton county records where said deeds are recorded. The said mortgage is conditioned for the payment on its face of fifteen thousand dollars, evidenced by two promissory notes made by the said firm of J. & W. Mahard, one for five thousand dollars, ($5,000) payable in ninety-five days from date to the order of Andrew Johnson, and by him endorsed; and the other note for ten thousand dollars, ($10,000) payable ninety-five days after date to the order of John McLaughlin, and by him endorsed, and said mortgage was recorded on the 30th January, A. D. 1842, in book No. 83, page 206 of said records. Respondent admits that on the 16th February, A. D. 1842, the said John Mahard, jr., executed to one Andrew Johnson a mortgage, as stated in the bill aforesaid, conveying to said Johnson all the said Mahard's interest and estate in lot No. 460, on the original plan of Cincinnati, which mortgage was made to secure said Johnson as endorser of two drafts and a note as follows, viz., draft for $3,500, dated 29th November, 1841, drawn and endorsed as stated in the bill; another draft for $3,420, dated 15th December, 1841, drawn and endorsed as stated in said bill; and one note for $, dated January 24, 1842, drawn and endorsed as stated in said bill; all which paper was made, as respondent believes, for the benefit and accommodation of J. & W. Mahard. Respondent admits, that said mortgage was recorded on the 16th February, 1842, book 83, page 325; but respondent charges that the same was not delivered to said Johnson, or to any person for him, at the date of the record aforesaid, nor did said Johnson know any thing of the existence of said mortgage until after the date of 21st February, 1842, as respondent believes. And he expressly charges that the said mortgage was afterwards cancelled by the said Andrew Johnson under his hand and seal, on the 14th day of April, A. D. 1842, as will be seen by the original mortgage ready to be shown to the court, and by the satisfaction thereof in full, entered upon the face of the record thereof by the recorder for Hamilton county. And respondent thereupon insists that the said mortgage is of no further validity in law nor equity.

Respondent further admits that on the 21st February, A. D. 1842, by two mortgage deeds of that date, the said John Mahard, jr., conveyed to respondent his interest in in-lots 460 and 404 in Cincinnati, to secure the payment of the sum of $1,304 81, thirteen hundred and four $\frac{81}{100}$ dollars, and by another mortgage of the same date said Mahard, jr. conveyed to respondent and John S. Buckingham his interest in the same lots to secure them in the payment of the amount of $9,344 37 dollars, then due to said Buckinghams by two notes dated respectively on the 27th November, 1838, and 1st August, 1841; which said mortgages are recorded the 21st day of February, 1842, in book 83, page

...ds, and hereto appended ...y copies marked A and B.

Respondent admits ...d John Mahard, junior, conveyed to Andrew Johnson by bill of sale, dated 18th March, 1842, a large amount of personal property, chiefly live stock, which property, by agreement, was left in the possession of said John Mahard, jr., but that said conveyance was made to secure said Johnson on his liabilities for J. and W. Mahard, this respondent does not believe, but it was fraudulent, for the purpose of covering up the property from the creditors of John Mahard, jr., and the firm aforesaid. This respondent was absent from the State of Ohio, at New Orleans, when the power of attorney to confess judgment, dated 7th April, 1842, was executed by J. and W. Mahard to John S. Buckingham, for the sum of fourteen thousand eight hundred dollars, (14,800,) and the ratification thereof by Wm. Mahard of the place last mentioned, on the 20th April, 1842, and so does not know the particulars of the execution and delivery of the said power of attorney and its said ratification, but he has seen both the documents, and he annexes a copy of each to this answer, marked C, D, and insists on their validity. Respondent further answering says, that the said sum of fourteen thousand eight hundred dollars was at the time of the confession of judgment, and the date of the said power of attorney, justly due and owing by the said J. and W. Mahard to said John S. Buckingham and the respondent, who was equally interested in the said debt; but the proceedings aforesaid in reference to it were conducted in the name of said John S. Buckingham, (his brother,) for the sake of convenience, as said J. S. Buckingham was on the spot, and respondent absent at New Orleans; respondent admits that execution was ordered out on said judgment at the instance of respondent as mentioned in said bill, and that such proceedings were had thereon as therein set forth; and respondent admits that he and John S. Buckingham have filed a bill in the chancery side of the court of common pleas of said county of Hamilton, as set out in the bill; and respondent further answering saith, that he does not know whether or not, immediately preceding the execution of the mortgage by said John Mahard, jr., to the President, Directors, and Company of the Lafayette Bank of Cincinnati, as the said bill charges, the said Mahards failed and stopped payment, and suffered their paper to be protested, and were in fact at the time of executing said mortgage greatly insolvent; but this respondent, on the contrary, believes, at that time, and also on the 16th and 21st February, 1842, when said mortgages were given, and on the 7th April, A. D. 1842, when said power of attorney was given to confess the judgment aforesaid, and also on the 20th April, 1842, when said power of attorney was ratified, and afterwards, the said Mahards believed that they were able to carry on their business as before. And this respondent believes that the confession of said judgment, and the confirmation thereof aforesaid, and the granting of said mortgages to respondent and John S. Buckingham, were not, nor was either of them, an act done in contemplation of bankruptcy, and that neither of said acts was

intended to prefer this respondent to oth[illegible] in favor of the bankrupt laws of the United States. An[illegible] expressly denies that he knew, either at the time when the [illegible] mortgages were granted to this respondent and his brother, John S. Buckingham, or at the time when said power of attorney was given by said Mahards to John S. Buckingham, or when said judgment was confessed, that the said Mahards contemplated bankruptcy; and respondent further answering says, that the said mortgage granted to him and to his brother, John S. Buckingham, *were* so granted on the demand and urgent request and solicitation of them both, repeatedly and earnestly made to John Mahard, jr., the business partner of the houses of J. & W. Mahard and Mahard and Brother, at Cincinnati, to secure the sum therein mentioned, which was then justly due and owing to this respondent and the said John S. Buckingham; and respondent further says, that he had no notice whatever, when the said mortgages to him and John S. Buckingham were granted by said Mahard, or when the said power of attorney was given or ratified as aforesaid, of any act of bankruptcy committed by the said J. & W. Mahard, or either of them, or of the intention of them or of either of them, to take the benefit of the Bankrupt law of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States." But, on the contrary thereof, expressly avers that said John Mahard, jr., constantly insisted on his solvency, and his ability to meet all his engagements; and this respondent, who had returned from New Orleans about the tenth day of April, A.D. 1842, as well as John S. Buckingham, confided in the said representations of said John Mahard, jr., until about six weeks after the confession of said judgment, viz., 22d May, 1842, when respondent and brother as aforesaid discovered that said Mahards were conducting their business unsatisfactorily and unprofitably, and respondent and brother caused the said execution to issue, and made the levy on the farming stock and the farming implements as aforesaid; respondent further answering says, that it is true that the levy aforesaid upon the farming stock of said Mahard, jr., made as aforesaid, May 22d, 1842, by John S. Buckingham, was enjoined by a writ from the superior court of Cincinnati, but that the injunction was dissolved and said property subsequently sold; and that $1,300, the nett proceeds, are in the hands of John C. Avery, late sheriff of Hamilton county, for the benefit of said Buckingham and respondent, but further enjoined by this bill and the proceedings in the present case. Respondent further says, that said John S. Buckingham, by virtue of his said judgment, levied on all the real estate set forth in this bill, as well as much other real estate not therein mentioned, and claims the right by virtue of said levy to subject the whole of said real estate, divested of all liens which are satisfied or fraudulent, to the payment of his said judgment; and this respondent prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

W. M. CORRY, *Solicitor*.

STATE OF OHIO
Hamilton County, to.

Personally came before me, Isaac C. Copelin, a justice of the peace for said county, Mark Buckingham, the above respondent, and being sworn, deposes and says, that the above answer is true in substance and in fact.

MARK BUCKINGHAM.

Sworn to and subscribed before me this 27th January, 1843.

ISAAC C. COPELIN,
[SEAL.] *Justice of the peace.*

The following are the exhibits referred to in the foregoing answer of Mark Buckingham:

Exhibit A.

Know all men by these presents, that I, John Mahard, jr., of the county of Hamilton, and State of Ohio, in consideration of thirteen hundred and four dollars and eighty-one cents, to me paid by Mark Buckingham, of the same place, the receipt whereof is hereby acknowledged, do hereby bargain, sell, and convey, to the said Mark Buckingham, his heirs and assigns forever, the following real estate, viz: all my right, title and estate, in and to the following real estate, lying in the city of Cincinnati, county of Hamilton, and State of Ohio, viz., all my present interest in that certain in-lot, numbered on the original recorded plat of said city as in-lot number four hundred and sixty, (460) it being the same property conveyed to the present grantor, by John Mahard, by two deeds, bearing date, the one the 3rd of October, 1828, and recorded in book, No. 29, page 251, of said Hamilton county records; the other the 13th of February, 1837, and recorded in book 62, page 236, of same records; to which deeds reference is hereby made; hereby conveying all of said in-lot No. 460, saving and excepting a certain lot of thirty feet, on Water street, by one hundred feet deep, out of the northwest corner of said in-lot, previously conveyed by John Mahard, and a certain other lot adjoining on the east; said thirty feet lot being about twenty-three feet on Water street, by about one hundred feet deep, conveyed by the present grantor, to William Mahard, on the 3d of March, 1837, as per deed recorded in book No. 68, page 504, of same records; also all my right, title, and estate, in and to that certain other real estate, situate in the city, county, and State aforesaid, with all the buildings and improvements thereon, lying on the northeast corner of Water and Walnut streets, and being the southwest corner of in-lot number four hundred and four (404,) beginning at the corner of Walnut and Water streets, and running thence with the north line of Water street, seventy-four feet; thence northwardly, at right angles to Water street, fifty-two feet; thence eastwardly, parallel with Water street, ten feet thence; northwardly, parallel with Water street, six feet; thence westwardly, parallel with Water street,

eighty-four feet [illegible] Walnut street; thence [illegible] with the line of Walnut street, forty-seven and a half feet to the place of beginning; being the same property which was conveyed to the present grantor, in part by John Mahard, by deed dated the 13th of February, 1837, and recorded in book No. 62, page 236, of said Hamilton county records; and in the other part by the Bank of the United States, by deed dated the 10th of September, 1830, and recorded in book No. 34, page 282, of same records, together with all the privileges and appurtenances to the same belonging. To have and to hold the same to the said Mark Buckingham, his heirs and assigns forever, hereby covenanting that the title so conveyed is clear, free, and unincumbered, and that I will warrant and defend the same against all claims whatsoever. Provided, always, that if the said John Mahard, jr., his heirs, executors, administrators, or assigns, shall cause to be paid unto the said Mark Buckingham the sum of thirteen hundred and four dollars and eighty-one cents, and interest, according to the tenor and effect of two certain promissory notes, one for $244.81, drawn by J. & W. Mahard, and the grantee, on the 14th of December, 1838, and payable four months after date to the order of Andrew Ferris; and the other for $1,060, drawn by J. & W. Mahard, and the grantee herein, the 18th of December, 1838, and payable six months after date to the order of Andrew Ferris, which said notes the grantee ought not to pay, but said J. and W. Mahard alone, and to secure him against the payment of which this mortgage is given, then these presents shall be void. In witness whereof, the said John Mahard, jr., and Mary K. Mahard, his wife, who hereby forever relinquishes her right of dower in said premises, hereunto set their hands and seals, this 21st day of February, in the year eighteen hundred and forty-two.

JOHN MAHARD, Jr., [SEAL.]
MARY K. MAHARD. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN JONES,
JULIA ADAMS.

STATE OF OHIO,
Hamilton county, ss.

Be it remembered, that on this 21st day of February, in the year of our Lord one thousand eight hundred and forty-two, before me, the subscriber, a justice of the peace in and for said county, personally came John Mahard, jr., and Mary K. Mahard, his wife, the grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed for the uses and purposes therein mentioned. And the said Mary K. Mahard, wife of the said John Mahard, jr., being examined by me separate and apart from her said husband, and the contents of said deed made known and explained to her, did declare that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith, as her act and deed, for the uses and purposes therein mentioned. In testimony whereof I have hereunto sub-

... my seal officially, on ... day and year ... aforesaid.

JOHN JONES, Jr. [SEAL.]

Endorsed.

J. Mahard, jr., and wife to Mark Buckingham, mortgage No. 4, received 21st February, 1842, and recorded in book No. 83, page 344, Griffin Yeatman, recorder, Hamilton county, Ohio.

Exhibit B.

Know all men that I, John Mahard, jr., of the county of Hamilton, and State of Ohio, in consideration of nine thousand three hundred and forty-four dollars and thirty-seven cents, to me paid by John S. Buckingham and Mark Buckingham, of the same place, the receipt whereof is hereby acknowledged, do hereby bargain, sell, and convey to the said John S. Buckingham, and Mark Buckingham, their heirs, and assigns, forever, the following real estate, viz: all my right, title, and estate, in and to the following real estate, lying in the city of Cincinnati, county of Hamilton, and State of Ohio, viz., all my present interest in that certain in-lot, numbered on the original recorded plat of said city as in-lot four hundred and sixty, (460,) it being the same property conveyed to the present grantor, by John Mahard, by two deeds, bearing date the one the 3rd day of October 1828, and recorded in book No. 29, page 251, of said Hamilton county records; the other the 13th of February, 1837, and recorded in book 62, page 236, of same records; to which deeds reference is hereby made; hereby conveying all of said in-lot, No. 460, saving and excepting a certain lot of thirty feet, on Water street, by one hundred feet deep, out of the northwest corner of said in-lot, previously conveyed by John Mahard, and a certain other lot, adjoining on the east said thirty feet lot, being about twenty-three feet on Water street, by about one hundred feet deep, conveyed by the present grantor to William Mahard, on the 3rd of March, A. D. 1837, as per deed recorded in book No. 68, page 504, of same records. Also all my right, title, and estate in and to the following real estate, situate in the city, county, and State aforesaid, with all the buildings and improvements thereon, lying on the northeast corner of Water and Walnut streets, and being the southwest corner of in-lot number four hundred and four, (404,) beginning at the corner of Water and Walnut streets, and running thence with the north line of Water street, eastwardly, seventy-four feet; thence northwardly, at right angles with Water street, fifty-two feet; thence eastwardly, parallel with Water street, ten feet; thence northwardly, parallel with Walnut street, six feet; thence westwardly, parallel with Water street, eighty-four feet, to Walnut street; thence southwardly, with the line of Walnut street, fifty-seven and a half feet, to the place of beginning; being the same property which was conveyed to the present grantor by John Mahard, in

part by deed bearing date the 15th of F[illegible], said recorded in book No. 62, page 236, of said Hamil[illegible] records; and by the Bank of the United States, in the other part, by deed bearing date the 10th of September, 1830, and recorded in book No. 34, page 282, of same records, together with all the privileges and appurtenances to the same belonging; to have and to hold the same to the said John S. Buckingham and Mark Buckingham, their heirs and assigns forever, hereby covenanting that the title so conveyed is clear, free, and unincumbered, and that I will warrant and defend the same against all claims whatsoever: Provided, always, that if the said John Mahard, jr., his heirs, executors, administrators or assigns, shall cause to be paid unto the said John S. Buckingham and Mark Buckingham, the sum of nine thousand three hundred and forty-four dollars and thirty-seven cents and interest, according to the tenor and effect of two certain promissory notes, one for $7244 $\frac{37}{100}$ drawn by J. & W. Mahard, August 1st, 1841, and payable and belonging to the said grantees herein; and the other for $2120, drawn by J. & W. Mahard and the said grantees herein, but which said grantees ought not to pay, but said J. & W. Mahard alone, dated 27th of November, 1838, and payable six months after date, to the order of E. Jewett, and to secure said grantees against the payment of which this mortgage is in part given, then these presents shall be void.

In witness whereof the said John Mahard, jr., and Mary K. Mahard, his wife, who hereby forever relinquishes her right of dower in said premises, hereunto set their hands and seals, this 21st day of February, in the year eighteen hundred and forty-two.

JOHN MAHARD, Jr. [SEAL.]
MARY K. MAHARD. [SEAL.]

Signed, sealed, and delivered, in presence of—
JOHN JONES,
JULIA ADAMS.

STATE OF OHIO,
Hamilton county, ss.

Be it remembered, that on this 21st day of February, in the year of our Lord one thousand eight hundred and forty-two, before me, the subscriber, a justice of the peace in and for said county, personally came John Mahard, jr., and Mary K. Mahard, his wife, the grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed for the uses and purposes therein mentioned. And the said Mary K. Mahard, wife of the said John Mahard, jr., being examined by me separate and apart from her said husband, and the contents of said deed made known and explained to her, did declare, that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith as her act and deed for the uses and purposes therein mentioned.

... hereunto subscribed my name and affixed my seal ... day and year last aforesaid.

JOHN JONES, *J. P.* [SEAL.]

(Endorsed.) J. Mahard, jr., and wife, to J. S. & M. Buckingham, mortgage No. 5. Rec'd 21st February, 1842, and recorded in book No. 83, page 345.

GRIFFIN YEATMAN, *Recorder,*
Hamilton county, Ohio.

Exhibit C.

Know all men by these presents, that we, John Mahard, jr., and William Mahard, partners in trade, doing business at Cincinnati and New Orleans, under the firm of J. & W. Mahard, do hereby authorize and empower William M. Corry, or any other attorney in the State of Ohio, to appear in any court of record of said State, at a regular term thereof, and waive process, and confess a judgment against us in favor of John S. Buckingham for the sum of fourteen thousand eight hundred dollars; and we do hereby release all errors in his proceedings, and waive the right of appeal from said judgment, or do authorize him to do so, as the case may require. In testimony whereof we have hereunto set our hands and seals, this seventh day of April, A. D. eighteen hundred and forty-two.

JOHN MAHARD, JR., [SEAL.]
WILLIAM MAHARD, [SEAL.]
By JOHN MAHARD, JR.

In presence of—
ELIJAH CAMPBELL,
W. M. CORRY.

Exhibit D.

Whereas on the eighth day of April, A. D. 1842, judgment was confessed by Wm. M. Corry, as the attorney of John Mahard, jr., and William Mahard, partners, trading under the firm of J. & W. Mahard at Cincinnati and New Orleans, in favor of John S. Buckingham for the sum of fourteen thousand eight hundred dollars, in the supreme court of Ohio, for the county of Hamilton, in pursuance of a certain power of attorney executed by John Mahard, jr., and William Mahard, by said John Mahard, jr., dated 7th April, 1840, and sealed with our seals. And whereas the said power of attorney was so executed, on my part and behalf, by the said John Mahard, jr., according to my wishes, and with my concurrence:

Now, know all men by these presents, that I, the said William Mahard, of the firm aforesaid, do hereby, in consideration of the premises, fully ratify, confirm, and adopt said power of attorney as my own voluntary act and deed, for the uses and purposes therein contained. In testimony whereof I have hereunto set my hand and affixed

my seal, at New Orleans, this 20th day [illegible] eighteen hundred and forty-two.

WILLIAM MAHARD. [SEAL.]

In presence of—
JOHN WADE.

And afterwards, to wit, on the first Monday in the month of March, in the year of our Lord eighteen hundred and forty-three, came the defendants, the President, Directors and Company of the Commercial bank of Cincinnati, and George Milne and James Keith, jr., by V. Worthington, esq., their solicitor, and filed in the clerk's office of said court the joint and several answer of the said defendants, in the words and figures following, to wit:

Answer of the Commercial Bank of Cincinnati, and George Milne and James Keith, jr.

The joint and several answer of the President, Directoise and Company of the Commercial Bank of Cincinnati, and George Milne and James Keith, junior, three of the defendants to the bill of complaint of Nathaniel C. McLean, complainant. These respondents, for answer to said bill, or to so much and such parts thereof as they are advised it is material for them to make answer unto, come, and jointly and severally say, it is true, as in said bill alleged, that the said John Mahard, junior, did on the sixteenth day of February, A. D. 1842, execute and deliver to the said Andrew Johnson his certain mortgage of that date on the premises therein described, to secure the payment of the said bills and notes therein named; and that the said mortgage was duly recorded as in said bill set forth; and these defendants are ready to produce a copy thereof as the court may require. And your respondents, the President, Directors, and Company of the Commercial Bank of Cincinnati, in further answering say, that the said bill of November 29, 1841, in said mortgage named, for thirty-five hundred dollars, was drawn and dated at Cincinnati by the said John McLaughlin, addressed to the said John Mahard, junior, and William Mahard, partners in trade under the name of Mahard & Brother, at New Orleans, in the State of Louisiana, and without the jurisdiction of the State of Ohio, to the order of the said John Mahard, junior, and William Mahard, partners in trade, under the name of J. & W. Mahard, at Cincinnati aforesaid, and endorsed by them and the said Andrew Johnson, and payable four months after the date thereof; and was, on the 29th day of November, 1841, discounted by your respondents last named, at the instance of the said John McLaughlin; but they have since been advised that the proceeds thereof went into the hands of the said John Mahard, junior, and were applied by him to the exclusive use and benefit of the said J. & W. Mahard in and about their business, under the immediate charge of the said John Mahard, junior, who had charge of the business of the firm in Cincinnati, while the said William Mahard had charge of that in New Orleans. Your respondents last named in further answering say, that on the seventeenth day of December, A. D. 1841, they caused

said bill to ... the counting-house of the said Mahard & Brother, on which it was drawn, in New Orleans, and the acceptance thereof to be then and there demanded; which was refused by the said Mahard & Brother, and the said bill was not then and there accepted; and thereon the same was then and there duly protested for non-acceptance, of all which the said drawer and endorsers of the said bill were afterwards then and there, on the day and year last aforesaid, duly and legally notified, as your respondents are ready to prove as the court may require. And further, at the maturity of the said bill, to wit, on the first day of April, A. D. 1842, they caused the same to be presented at the counting-house of the said Mahard & Brother, in New Orleans aforesaid, for payment, and payment thereof to be then and there demanded of them, which was refused; and thereon they caused the same then and there to be protested for non-payment; of all which the said drawer and endorsers were afterwards then and there, on the day and year last aforesaid, duly notified as the law required, and this your respondents last named are also ready to establish as the court may require. Your respondents last named in further answering say, that at the October term, 1842, of the superior court of Cincinnati, in the State of Ohio, by the consideration of the judge thereof, they recovered a judgment against the said maker and endorsers upon said bill for the sum of $3,827 75 damages, besides costs, as fully appears from the record thereof now remaining in said court in full force, and a copy whereof your respondents last named can produce as the court may require. Your respondents, George Milne and James Keith, junior, further answering, jointly and severally say, that the said note in the said mortgage named as sold to them under the name of George Milne & Co., was for thirty-four hundred and thirty-three dollars, and that the same at the maturity thereof, to wit, on the twenty-seventh day of April, 1842, was presented at the place of business of the said J. & W. Mahard in Cincinnati, and payment thereof was then and there demanded, when and where the same was refused; of all which the said Andrew Johnson and Jacob L. Enyart, the endorsers thereof, afterwards then and there, on the day and year last aforesaid, had notice, and by reason thereof became liable to pay the amount of the said note to the said George Milne & Co., your respondents last named.

Your respondents last named, in further answering, jointly and severally say, that at the October term, 1842, of the superior court of Cincinnati aforesaid, by the consideration of the judge thereof, they obtained a judgment against the said Andrew Johnson, upon the said note for $3,522 25 damages, besides costs, as fully appears from the record thereof now remaining in said court in full force, and a copy whereof your respondents are ready to produce as the court may require. These respondents, in further answering, jointly and severally say, that the said mortgage in equity enures to their benefit, and they have good right to subject the said mortgaged premises to the payment of the said bill and note, and that the said Andrew Johnson held the same in trust for their use, and could make no use thereof prejudicial

to their interests, nor could he in any way [illegible] the same as to the rights of these respondents. These respondents, in further answering, jointly and severally say, that the said Andrew Johnson, without the knowledge or consent of these respondents, on or about the fourteenth day of April, 1842, at the instance and through the persuasion of John S. Buckingham and Mark Buckingham, as they are informed and believe, but without consideration, released all his interest in and to the said mortgaged premises, and discharged his lien, and directed satisfaction to be entered of record, and delivered the said mortgage to one of the said Buckinghams, who had the same entered of record; and that in equity the same is of no obligation against these respondents. The respondents, in further answering, jointly and severally say, that on the seventeenth day of June, 1842, they caused their bill in chancery to be filed in the superior court of Cincinnati, against the said John Mahard, junior, and others, to foreclose the said mortgage, and settle the various conflicting rights to the said mortgaged premises, and that the said bill now remains in said court, undecided; and these respondents deny that this court can now oust that court of its jurisdiction of the subject matter and the parties, and by way of answer set up the pendency of the said bill as a bar to so much of the complainant's said bill as seeks to bring the same subject matter before this court. Your respondents, in further answering, jointly and severally say, that at the time of the execution of the said mortgage of the sixteenth day of February, 1842, they did not know of the insolvency of the said John Mahard, junior, and William Mahard, nor did the said Andrew Johnson, as they are informed and believe; nor did they, nor did the said Andrew Johnson, as they are also informed and believe, know that the same was given by the said John Mahard, junior, in contemplation of bankruptcy; but, on the contrary, they have been informed and believe that the said John Mahard, junior, then believed that he would be able to pay all his debts, and had no idea of going into bankrupty; but discovering subsequently the great arrearages of the house in New Orleans, which entirely changed the aspect of his affairs, he then determined to go into bankruptcy; these respondents deny that the said mortgage was executed in fraud of the Bankrupt law of the United States, and insist that the same is valid in law. These respondents, in further answering, jointly and severally say, that they are advised that it is not material for them to answer the matters in said bill charged, not hereby and herein answered unto; and having fully answered, they deny all fraud charged, and not admitting any matter or thing in said bill charged, not herein and hereby answered unto, they pray to have such protection as the equity of their case may require, otherwise to be dismissed, &c.

V. WORTHINGTON, *Sol.*

The President, Directors, and Company of the Commercial Bank of Cincinnati, under their corporate seal, say the foregoing answer upon their behalf is true in substance and matter of fact, to the best of their knowledge, information and belief, as therein stated.

[SEAL.]

George Milne, one of the above defendants, says upon oath, that the matters set forth in the foregoing answer upon his behalf are true as therein stated, to the best of his knowledge, information, and belief.

GEORGE MILNE.

Sworn to and subscribed before me, this 6th day of March, 1843.

WM. MINER, *Clerk*.

James Keith, jr., one of the above defendants, says upon [oath,] that the matters set forth in the foregoing answer upon his behalf are true as therein stated, to the best of his knowledge, information, and belief.

JAS. KEITH, Jr.

Sworn to and subscribed before me this 6th day of March, 1843.

WM. MINER, *Clerk*.

And also, on said first Monday in the month of March, A. D. eighteen hundred and forty-three, came the defendants, James Dundas, Mordecai D. Lewis, Samuel W. Jones, Robert L. Pitfield, and Robert Howell, by V. Worthington, esq., their solicitor, and filed in the clerk's office aforesaid the joint and several answer of the said defendants to the said bill of complaint, which said answer is in the words and figures following, to wit:

Answer of James Dundas et als.

The joint and several answer of James Dundas, Mordecai D. Lewis, Samuel W. Jones, Robert L. Pitfield, and Robert Howell, five of the defendants to the bill of complaint of Nathaniel C. McLean, complainant.

These respondents, for answer to said bill, or to so much and such parts thereof as they are advised it is material for them to answer unto, come, and jointly and severally say, that these respondents, in the name of the President, Directors, and Company of the Bank of the United States, a body politic chartered by the State of Pennsylvania, and for the use of these respondents, at the July term, 1841, of the superior court of Cincinnati, in the State of Ohio, by the consideration of the judge of the said court, obtained a judgment against the said John Mahard, junior, and John McLaughlin, for twenty-seven hundred and twenty-eight dollars [and] sixty-three cents, damages, besides costs, as will fully appear from the record thereof now remaining in said court.

These respondents, in further answering, jointly and severally say, that the said cause was, in due form of law, appealed to the supreme court of the State of Ohio, within and for the county of Hamilton, and that upon the said appeal, these respondents, in the name of the said the President, Directors, and Company of the Bank of the United States, and for the use of these respondents, at the April term, eighteen hundred and forty-two, of the court last aforesaid, within and for the county last aforesaid, by the consideration of the judges thereof, obtained a judgment against the said John Mahard, junior, and John McLaughlin, for

twenty-nine hundred and seventy-nine [illegible]-nine cents, damages and penalty, besides costs, as will fully appear from the record thereof now remaining in said court; and that execution thereon was directed to go against the said McLaughlin as security, and the said cause was remanded to the court below for execution. And these respondents, in further answering, jointly and severally say, that at the July term, eighteen hundred and forty-two, of the superior court of Cincinnati aforesaid, the said supreme court sent a special mandate to the said the superior court of Cincinnati, to award execution upon the said judgment last aforesaid, and thereon the said superior court of Cincinnati, at the term last aforesaid, did award execution upon the said judgment, as fully appears from the records thereof now remaining in said court last aforesaid.

And these respondents, in further answering, jointly and severally say, that on or about the tenth day of August, in the year last aforesaid, they caused an execution to issue upon the said judgment, returnable to the October term, in the year last aforesaid, of the said the supreme court of Cincinnati, under the seal of the said court, and tested by the clerk thereof, directed to the sheriff of Hamilton county, and to be delivered to the said sheriff; who afterwards, on the thirteenth day of August, in the year last aforesaid, endorsed upon the said execution, no goods, and levied the same upon the following real estate, to wit:

All that lot of land, with the buildings thereon, in the city of Cincinnati, the northeast corner of Water and Walnut streets, part of lot No. 404, fronting on Water street seventy-four feet, and fronting on Walnut street fifty-seven feet six inches, extending back on lines parallel [to] said streets, including a space of ten by six feet, at the northeast corner of said lot; the whole being bounded by the lines of the property conveyed to John Mahard, junior, by deed from the Bank of the United States and from John Mahard, senior. Also all that lot of land in Cincinnati, with the buildings thereon, part of lot No. 460, the southwest corner of Water and Walnut streets, fronting on the south side of Water street seventy feet, and extending back southerly one hundred feet to the wharf, bounded east by Walnut street, south by the wharf or river landing, west by Charles B. Dyer's lot, formerly Robert Stewart's, and north by Water street, conveyed to John Mahard, junior, by John Mahard, senior. Also all the wharf or landing and lot of land in Cincinnati, on the Ohio river, adjoining south of the foregoing the south part of lot No. 460, bounded east by Walnut street, south by the Ohio river, about one hundred feet, west by lot No. 459, and bounded north one hundred feet by the foregoing lot, and by said Dyer's lot, conveyed to John Mahard, junior, by John Mahard, senior. Also about three hundred acres of land, the farm and adjacent tracts of John Mahard, junior, in Columbia township, Hamilton county, Ohio, near Madison, part of section twenty-one, twenty-two, twenty-six, twenty-seven, and eighteen, in the fourth township and second fractional range, and including all the lands at any time owned by said Mahard in said Columbia township, conveyed to said John Mahard,

...ances, by ... contracts, among which are the following deeds of record, viz:

Charles Fo...'s deed, recorded in book No. 58, page 437. Benjamin Jones's deed, recorded in book No. 58, page 453. William McIntire's deed, recorded in book No. 41, page 478. Speer Ferguson's deed, recorded in book No. 49, page 404. David Martin's deed, recorded in book No. 47, page 193. Alexander Martin's deed, recorded in book No. 50, page 456, and William Lofthouse's deed, recorded in book No. 71, page 430, of the records of Hamilton county aforesaid. And also a lot of land in Cincinnati, with the buildings, on George street, between Western Row and John street, fronting on the north side of George street one hundred and five and a half feet, and extending back northerly ninety feet to an alley, at the distance of eighty-two feet east of John street, and being the same lot conveyed to John Mahard, junior, by the sheriff, as the property of Patrick Connelly, by deed dated 9th December, 1839, recorded in book No. 73, page 435, of the records aforesaid. Also a lot of ground in Cincinnati, with the buildings on Court street, between Elm and Plum streets, fronting on the north side of Court street seventy feet, and extending back at right angles northerly seventy-six feet, at the distance of one hundred and fifty feet from Elm street, being the residence of John McLaughlin, and conveyed to him by deed from the executors of Edmund C. Smith, deceased, recorded in book No. 49, page 647, and by deed from Mark Buckingham and others, see records of Hamilton county, Ohio; and also that lot of land in Cincinnati, on Walnut street, between the canal and Twelfth street, lot (No. 62,) number sixty-two, Benham's subdivision of St. Clair property, fronting on the west side of Walnut street twenty-four feet, and extending back one hundred feet, at the distance of fifty-four feet from twelfth street, conveyed to John Mahard, junior, by deed from Benjamin Merrill, recorded in book No. 42, page 338 of the records aforesaid, as fully appears from the return on the said execution now on file in the clerk's office of the said court. These respondents, in further answering, jointly and severally say, that the said the President, Directors, and Company of the Bank of the United States, being indebted to the following named banks in the city and county of Philadelphia, to wit, the President, Directors, and Company of the Bank of Pennsylvania, the Philadelphia Bank, the Farmer's and Mechanic's Bank, the Commercial Bank of Pennsylvania, the Bank of North America, the Mechanic's Bank of the City and County of Philadelphia, the Manufacturer's and Mechanic's Bank of Northern Liberties, in the county of Philadelphia, the Kensington Bank, in the county of Philadelphia, the Bank of the Northern Liberties, and the Bank of Penn Township, for sundry post notes of the said the President, Directors and Company of the Bank of the United States, amounting in the whole to five million and seventy-eight thousand four hundred and forty-four dollars and ninety-four hundredths of one dollar, which had been given to the said banks in retiring the circulation and bank notes of the said the President, Direc-

tors, and Company of the Bank of the U[illegible] in making balances under an agreement to provide an adequate security for the payment of the said notes, and the interest to accrue upon them, did, on the first day of May, A. D. one thousand eight hundred and forty-one, at the city of Philadelphia, in the State of Pennsylvania, in pursuance of a resolution of the stockholders of the said the President, Directors, and Company of the Bank of the United States, sanctioning the same by deed duly executed, transfer to these respondents, among others, the claim upon which said judgments were obtained, in trust to collect the same for the following uses, that is to say: first, to pay the reasonable and necessary expenses of the trust; secondly, to distribute the same when collected, rateably, towards the payment of the said post notes and interest thereon, until the same shall be discharged; and thirdly, after the same shall be paid to re-transfer the remainder of the premises thereby granted to the said the President, Directors, and Company of the Bank *of the Bank* of the United States, their successors and assigns, as fully appears from the said deed of trust as recorded on the twenty-seventh day of August, in the year last aforesaid, in book 82, page 85 to 153 inclusive, of the records aforesaid, and a copy whereof these respondents are ready to produce as the court may require. These respondents, in further answering, jointly and severally say, that they accepted the said trusts, and forthwith took possession of the property and assets embraced in said trusts, and thereupon appointed Timothy Kirby their agent at Cincinnati, and notified him from the city of Philadelphia aforesaid, where said deed of trust was executed, delivered, and accepted of the said transfer and his appointment, on or about the second day of May, in the year last aforesaid, and of which he received due notice on or about the 8th day of May, in the year last aforesaid; and on the twelfth day of May, in the same year, he caused a notice of the said transfer and his appointment as agent for these respondents, to be published in the Cincinnati newspapers, or some of them; of all which the parties to this suit were shortly thereafter advised.

These respondents, in further answering, jointly and severally say, that the said trusts first and secondly provided for in the said deed of trusts for the said banks, in the city and county of Philadelphia, as herein before stated, have not been discharged; and these respondents claim, that the lien of their first judgment has been preserved, and that the same is the eldest and best lien upon the said premises so levied on as aforesaid, and to be the first satisfied from any sale thereof, or any portion thereof.

These respondents, in further answering, jointly and severally say, that they have been informed and believe, that since the rendition of their said judgment first aforesaid, the said John Mahard, jun., and John McLaughlin have in part conveyed and incumbered the several tracts of land herein before named, but to whom, and in what order, these respondents are not sufficiently advised to answer without further

inquiry, and shou... material to them, they reserve the right to further answer thereto a... the facts are ascertained.

These respondents, in further answering, jointly and severally say, that they are advised that no answer is required from them as to the matters set up in said bill, and not herein and hereby answered unto; but not admitting the same, and denying all fraud in the said bill charged, they pray that their rights may be protected, and they may have such relief in the premises as their case requires; and without that, that they may go hence with their reasonable costs, &c.

V. WORTHINGTON,
Solicitor.

We do hereby consent to receive the foregoing answer without being sworn to, &c., March 1, 1843.

WRIGHT, COFFIN & MINER,
With BROWN & McLEAN, *Solicitors.*

And afterwards, to wit, on the ninth day of March, in the year of our Lord eighteen hundred and forty-three, came the defendant, Frederick Trow, by Thomas J. Strait, esq., his solicitor, and filed in the clerk's office aforesaid his answer to the said bill of complaint, in the words and figures following, to wit:

Answer of Fred'k Trow.

To the honorable the circuit court of the United States, in and for the district of Ohio.

Your respondent, Frederick Trow, for separate answer to the bill of complaint of Nathaniel C. McLean, assignee of John Mahard, jr., against him and others, in your honorable court in chancery exhibited, (saving all legal exceptions to said bill) says, that of the matters, facts, and allegations set forth in said bill he knows nothing, nor has he any belief in relation thereto, or any information of the same, other or further than this, that on 19th day of November, in the year eighteen hundred and thirty-three, the said John Mahard, junior, and John Mahard, senior, made their certain promissory note in writing, by which they promised to pay to this respondent the sum of seven hundred dollars, and which was given on account of money lent by respondent; that afterwards, respondent brought suit on said note in the court of common pleas of the State of Ohio, in and for Hamilton county, and at the June term of said court, in the year eighteen hundred and forty-one, recovered a judgment thereon, by the consideration of the said court of common pleas, for the sum of $987 *dollars*, and costs taxed at $11 28; from which said judgment the said John Mahard, senior, and John Mahard, junior, appealed to the supreme court of said State, sitting in said county, and gave bond and security to perfect said appeal; and thereupon such proceedings were had, that on the second day of April, 1842, by the consideration and judgment of said supreme court, respondent recovered on said appeal against the said John Mahard, senior and

junior, the sum of $1,052 *dollars*, and co[illegible] $12 56 *dollars*; upon which said judgment an execution [illegible]ssued, and was about to be levied upon the real estate of t[illegible]aid John Mahard, senior, but whether a levy was or was not made, respondent does not know, but he is informed that the said John Mahard, junior, during the life of said execution, paid to the then sheriff of said county the full amount of said judgment with interest and costs; and which amount he claims and insists is of right his, any decree of bankruptcy of John Mahard, junior, to the contrary notwithstanding; and having answered as he is informed fully, prays hence to be dismissed with his costs.

By TH. J. STRAIT,
Solicitor for respondent.

STATE AND DISTRCT OF OHIO, *ss.*

Before me, a justice of the peace in and for Hamilton county, in said State, came Frederick Trow, the aforesaid respondent, and made oath in due form of law, that the matters set forth in his aforesaid answer are true to the best of his knowledge and belief.

FREDERICK TROW.

Sworn to and subscribed this 9th day of March, 1843, before me.

JOHN A. WISEMAN,
Justice of the peace.

And afterwards, to wit, on the fourteenth day of March, in the year of our Lord eighteen hundred and forty-three, came the defendant, Charles B. Dyer, by Messrs. Storer and Bond, his solicitors, and filed in the clerk's office aforesaid his answer to said bill of complaint, in the words and figures following, to wit:

Answer of Chs. B. Dyer.

United States, 7th circuit court, Ohio district.

CHARLES B. DYER, respondent,
ads.
NATHANIEL C. MCLEAN, assignee of John Mahard, jr., in bankruptcy, complainant.

In chancery.

The separate answer of Charles B. Dyer to the bill of complaint filed against him and others in the above stated cause. Before answering, this defendant humbly submits to the court whether the said complainant can or ought to proceed in his said suit until the final hearing and decision of the case involving the same subject matter to which the said complainant in his said bill has referred; and, having made this protestation, he, this defendant, saving, &c., to himself, now and at all times hereafter, &c., all and all manner of benefit, &c., saith, that he knows of none of the facts set forth by the complainants, with the exception of these, which he will afterwards state, but from the repre-

...nant in his bill, and he therefore requires that the same shall be answered. He admits, however, that on the twenty-fifth day of February, anno domini 1842, in consideration of the sum of ten thousand dollars, the said John Mahard, jun., conveyed to this defendant the portion of in-lot number four hundred and four, as described in the deed of conveyance, a copy of which, marked A B, is filed herewith, and referred to as part of this answer; which said sum he paid in good faith, without any knowledge, express or implied, of any other claim, lien, or encumbrance on said premises than the mortgage made by said Mahard to the Franklin Bank of Cincinnati, the judgment against said Mahard and McLaughlin in favor of the President, Directors, and Company of the Bank of the United States, and the judgment in favor of Frederick Trow against John Mahard and John Mahard, junior, which are, he admits, as to their dates and amounts, properly set forth in said bill, to which said complainant has referred as pending. He further admits, that he received at the time of said sale the guaranty from the said Franklin Bank, a copy of which is exhibited with said bill, to which he, the said complainant, refers, and he now asserts that the said purchase money was fully paid, by and with the consent of the said Mahard, to the said bank, in extinguishment of their lien by said mortgage before that time executed by the said Mahard to said bank, all which was done in good faith, and without design to defraud any person whatever. This defendant having paid every dollar of the purchase money, which was a full and fair price for the property, and received his deed duly executed, acknowledged, and which has been duly recorded, and being in the possession of said premises, claims to hold the title thereto to be free and unincumbered from all and every claim whatsoever, saving the supposed lien of the judgment of the said Bank of the United States, for which this defendant, as he has already stated, is indemnified. This defendant is informed and believes, that the judgment in favor of said Frederick Trow is satisfied, and is no longer a lien upon said premises; as to every other matter or thing alleged in said bill, this defendant, as he has already stated, requires proof; he knows nothing further than he has answered unto, and cannot admit any allegation in said bill other than what he has thus answered. He asks to be protected by the decree of this court in all his rights, and prays to be hence dismissed with his costs.

CHARLES B. DYER,
By STORER & BOND,
His Solicitors.

STATE OF OHIO, *Hamilton county, ss.*

Personally appeared before me, the subscriber, a justice of the peace, in and for the county aforesaid, Charles B. Dyer, the defendant named in the foregoing answer, and being by me duly sworn says, that the several matters and things contained in said answer, so far as the same are stated from his own knowledge, are true; and so far as they are

stated from the knowledge of others, he b[illegible] same to be true; and further he says not.

C. B. DYER.

Sworn to and subscribed before me, this 13th day of March, A. D. 1843, as witness my hand and seal.

EBENEZER HARRISON, [SEAL.]
Justice of the Peace.

The following is the exhibit referred to in the foregoing answer of Charles B. Dyer:

Exhibit A B.— Warrantee deed.

Know all men that we, John Mahard, junior, and Mary K. Mahard, wife of the said John Mahard, both of Cincinnati, Ohio, in consideration of the sum of ten thousand dollars to us paid by Charles B. Dyer, the receipt whereof is hereby acknowledged, do hereby bargain, sell, and convey, to the said Charles B. Dyer, his heirs and assigns, forever, the following real estate, viz:

All that lot of ground, with the buildings and improvements thereon, situate, lying, and being in the aforesaid city, county of Hamilton, and State of Ohio, and on the northeast corner of Water and Walnut streets, being the southwest corner of in-lot numbered four hundred and four, (404.) Beginning at the corner of Walnut and Water streets; thence running with the north line of Water street, eastwardly, seventy-four feet; thence northwardly, at right angles with Water street, fifty-two feet; thence eastwardly, parallel with Water street, ten feet; thence northwardly, parallel with Walnut street, six feet; thence westwardly, parallel with Water street, eighty-four feet, to Walnut street; thence southwardly, with the line of Walnut street, fifty-seven feet and a half, to the place of beginning, being the same property which was conveyed to the said John Mahard, junior, by John Mahard, senior, on the 15th of February, A. D. 1837, as per deed recorded 9th March, A. D. 1837, in book No. 62, page 236, of the records of deeds of said Hamilton county, Ohio; together with all the privileges and appurtenances to the same belonging.

To have and to hold the same to the said Charles B. Dyer, his heirs and assigns, forever; hereby covenanting that the title so conveyed is clear, free, and unincumbered, and that they will warrant and defend the same against all claims whatsoever.

In witness whereof the said John Mahard, junior, and Mary K. Mahard, his wife, who hereby releases all dower, hereunto set their hands and seals, this twenty-fifth day of February, in the year eighteen hundred and forty-two.

JOHN MAHARD, JR., [SEAL.]
MARY K. MAHARD. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN JONES,
ELEANOR K. PATTERSON.

STATE OF OHIO, *county*, ss.

Be it remembered that on this 25th day of February, in the year of our Lord one thousand eight hundred and forty-two, before me, the subscriber, a justice of the peace in and for said county, personally came John Mahard, junior, and Mary K. Mahard, wife of said John Mahard, junior, the grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed for the uses and purposes therein mentioned. And the said Mary K. Mahard, wife of the said John Mahard, junior, being examined by me separate and apart from her said husband, and the contents of said deed made known and explained to her, did declare, that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith as her act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name, and affixed my seal officially, on the day and year last aforesaid.

JOHN JONES, *J. P.* [SEAL.]

And afterwards, to wit, on the ninth day of May, in the year of our Lord one thousand eight hundred and forty-three, came the defendants, the President, Directors, and Company of the Lafayette Bank of Cincinnati, by Messrs. Chase and Ball, their solicitors, and filed in the clerk's office aforesaid their answer to said bill of complaint, in the words and figures following, to wit:

Answer of Lafayette Bank of Cincinnati.

The separate answer of the President, Directors, and Company of the Lafayette Bank of Cincinnati, to the bill of complaint exhibited against them and others, in this honorable court, by Nathaniel C. McLean, assignee in bankruptcy of John Mahard, junior.

These respondents (a body corporate and politic, created by the laws of the State of Ohio) for answer to so much of said bill of complaint, as they are advised by counsel it is material for them to answer, reserving all exceptions thereto, say that they presume it is true, as stated in said bill, that the said John Mahard, junior, on the twenty-seventh day of May, A. D. 1842, filed in the district court of the United States, in and for the district of Ohio, his petition for the benefit of the act, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved August 19, 1841, and that a decree of bankruptcy has been rendered against him, and that complainant was appointed his assignee; but of this latter fact these respondents know nothing of their own knowledge, and require proof.

And these respondents further answering admit, that the said John Mahard, jr., and William Mahard, were, prior to said 27th of May, 1842, partners, doing business under the firm of J. & W. Mahard, but whether the said William has or has not been declared and decreed a bankrupt, these respondents are not advised, other than so far as the fact is stated in said bill.

And these respondents further answering admit, that on the seventh

day of December, 1841, the said John Mah[illegible] together with Mary K. Mahard, his wife, by deed of that date, [illegible]uted and acknowledged, and recorded on the 13th day of [illegible]uary, 1842, in book 83, page 206, of the records of Hamilton county, Ohio, a copy whereof is hereunto annexed, and made a part of this answer, conveyed to these respondents the said real estate in said bill described, in fee simple, but subject to a condition of defeasance on the faithful payment by the said John Mahard, jr., and William Mahard, or one of them, to these respondents, of the sum of fifteen thousand dollars, with interest, according to the tenor and effect of two promissory notes, made by the said J. & W. Mahard, and bearing date the seventh day of December, 1841, (the date of said mortgage,) and payable each ninety-five days after the date thereof, as follows: One for ten thousand dollars, to the order of John McLaughlin, and by him endorsed, and the other for five thousand dollars, to the order of Andrew Johnson, and by him endorsed, which deed of mortgage was executed by said John, and delivered to these respondents, to secure the payment of said debt, according to the tenor and effect of said notes, and all interest due and to become due thereon.

And these respondents further answering deny, that said mortgage was executed by said John in contemplation of bankruptcy, or that he was known or considered to be in a state of insolvency, at the time of its execution; but these respondents had good reason to believe, and did believe, that said John was solvent and fully able to pay all his debts, and thereupon they agreed to give, and did give, him time to enable him the more readily to pay the said debts then due to these respondents. Respondents insist that said John Mahard, jr., did not contemplate bankruptcy at the time of the execution of said mortgage, but that he executed and delivered the same in good faith, to secure a bona fide debt then due to these respondents as aforesaid.

And these respondents further answering state, that said mortgage was executed, delivered, and recorded more than sixty days before the filing of said petition by said John Mahard, jr., for the benefit of said act, and that the transaction between said Mahard and these respondents was in good faith; and if the said John Mahard, (which they deny,) had it in contemplation, at the time of executing said mortgage, to take the benefit of said act, these respondents had no notice of such intention, either express or implied, and their mortgage is not affected by any subsequent proceedings in bankruptcy.

And these respondents further answering deny that said mortgage is fraudulent and void in law, but insist that the same is valid by the laws of the State of Ohio; that the mortgaged premises, if they passed by virtue of said decree to said complainant, as assignee as aforesaid, passed to him subject to the mortgage of these respondents, and that they are entitled to be first paid their mortgage debt out of the proceeds of mortgaged premises.

And these respondents further answering admit, that at the term of October, 1842, of the superior court of Cincinnati, they obtained a de-

cree upon said mor... ...inst the said John Mahard, jr., and Mary K. Mahard, his w... ...d complainant and other persons in interest, for the sale of said mortgaged premises, for the payment of the amount then and there found to be due to these respondents, upon said mortgage debt, from the said John Mahard, jr., to wit, the sum of fifteen thousand five hundred and nineteen dollars debt, together with costs of suit, and interest on said debt and costs from the 3d of October, 1842; and that an order for the sale of said premises was duly issued by said court, directed to John H. Gerard, sheriff of Hamilton county aforesaid, returnable at the January term, 1843, of said superior court; and these respondents insist that said decree was rendered by a court having competent jurisdiction, and that said complainant, as assignee of said John Mahard, jr., is a party to said decree, and is concluded thereby. These respondents state, that the said sum of money so found to be due to them by said decree, together with interest and costs, is still due them and wholly unpaid, and that they are now unjustly restrained from making their debt out of said mortgaged premises by the injunction of this court; and having fully answered, and denying all fraud and combination, they pray the court to dissolve said injunction and reinstate them in their lawful rights; and that on final hearing they may be hence dismissed, with their costs, &c.

CHASE & BALL,
Sols'. Respts.

THE DISTRICT OF OHIO,
Hamilton county, ss.

The said the President, Directors, and Company of the Lafayette Bank of Cincinnati, the respondents above named, in testimony of the truth of the several matters and things in the foregoing answer stated, by W. G. W. Gano, their cashier, have caused their corporate seal to be hereto affixed, with the signature of their said cashier, this 9th day of May, A. D. 1843.

W. G. W. GANO, *Cashier*. [SEAL.]

UNITED STATES OF AMERICA,
Ohio district, ss.

Personally appeared before James W. Taylor, a commissioner of the circuit court for the 7th circuit and district of Ohio, W. G. W. Gano, who, being duly affirmed, saith that he is cashier of the Lafayette Bank of Cincinnati, and has been so from its first organization, and has an intimate knowledge of its transactions; and that the statements contained in the foregoing answer are true in substance and in fact, to the best of his knowledge and belief.

W. G. W. GANO.

Sworn to and subscribed before me this 13th of July, 1846, at Cincinnati.

JAMES W. TAYLOR,
Master Com., C. C. U. S.

Copy of Mortgage.

Know all men by these presents, that John Mahard and Mary K. Mahard, his wife, of the county of Hamilton, in the State of Ohio, in consideration of fifteen thousand dollars, to them paid by the President, Directors, and Company of the Lafayette Bank of Cincinnati, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey, to the said the President, Directors, and Company of the Lafayette Bank of Cincinnati, their successors and assigns forever, all the real estate next hereinafter described, to wit: All that tract of land situate in section 22, township 4, and second fractional range of the Miami purchase in said county, described as follows: said tract to be laid off on the north side of the southeast quarter of said section, by a line running parallel with the north boundary of said quarter section, from east to west, at such a distance south from said north boundary as to include 120 acres, except 10 acres sold to S. W. Phelps, of the east end of said tract, and being the same premises conveyed to said Mahard by Charles Fox, by deed recorded in book 58, page 437, of the records of said county; also all that other tract of land in same section, township, and range, being the southwest quarter of said section No. 22, excepting the forfeit in the northeast corner; and also the lot of nine acres, 73 square rods, conveyed by William McIntire to A. Martin, by deed recorded in the records of said county, containing after said reservations 123 acres, three rods, and 20⅓ perches of land, and the same tract conveyed to said Mahard by said William McIntire, by deed recorded in book 41, page 478, of said records; also a tract of one acre, one rood, and four perches of land, adjoining the last described tract, conveyed to said Mahard by said Alexander Martin, by deed recorded in book 50, page 456 of said records; also that other tract of land in same township and range, known as the forfeiture of quarter section No. 18, on the plat of quarter sections, lying in a regular square in the northeast corner of said quarter section, and containing 26⅔ acres of land, and the same premises conveyed to said Mahard by Speer Ferguson, by deed recorded in book 49, page 404 of said records; also that other tract of land known as the forfeiture of the northwest quarter of section twenty-one in the same township and range, being a tract of 26⅔ acres in the northeast corner of said quarter section, laid off in a regular square, and the same tract conveyed to the said Mahard by B. Jones, by deed recorded in book 58, page 453 of the records aforesaid; to all of which deeds reference is made, together with all the privileges and appurtenances to the same belonging.

To have and to hold the said premises with the appurtenances, unto the said the President, Directors, and Company of the Lafayette Bank of Cincinnati, their successors and assigns forever; and the said John Mahard, for himself, his heirs, executors and administrators, doth hereby covenant that the title so conveyed is clear, free, and unincumbered, and that he will warrant and forever defend the same against the lawful claims of all persons whomsoever. Provided, always, and these

presents are on this condition, that if the said John Mahard, together with William Mahard, partners under the firm of J. & W. Mahard, their heirs, executors, administrators or assigns, shall pay to the said the President, Directors, and Company of the Lafayette Bank of Cincinnati, their successors or assigns, the sum of fifteen thousand dollars, according to the tenor and effect of their two promissory notes of even date herewith, and payable as follows: one in ninety-five days from date, to the order of Andrew Johnson, and by said Johnson endorsed for five thousand dollars; and the other payable in ninety-five days from date to the order of John McLaughlin, for ten thousand dollars, and by said McLaughlin endorsed; together with all notes or bills of exchange which shall hereafter be given in renewal or extension of either or both of said notes; and also all costs, charges, attorney's fees, and other expenses which may accrue by reason of the non-payment of either of said notes at maturity, or which may be incurred by means of a foreclosure of this mortgage, then this indenture, and every part thereof, to be void and of no effect, otherwise to remain in full force and virtue.

In testimony whereof the said John Mahard, together with the said Mary K., wife of the said John, who hereby forever relinquishes all her right of dower, have hereunto set their hands and seals this seventh day of December, in the year of our Lord one thousand eight hundred and forty-one.

JOHN MAHARD, Jr., [SEAL.]
MARY K. MAHARD. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN JONES,
ANDREW WILSON.

THE STATE OF OHIO, *Hamilton county, ss.*

Before me, a justice of the peace within and for the county aforesaid, personally came John Mahard and Mary K. Mahard, his wife, the grantors in the foregoing conveyance, and acknowledged that they executed the same as their voluntary act and deed, for the uses and purposes therein expressed. And the said Mary K. Mahard, wife of the said John, being by me examined separate and apart from her said husband, and the contents of said deed made known and explained to her, acknowledged that she executed the same as her voluntary act and deed, without any fear or coercion of her said husband, and that she is still satisfied therewith as her act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my seal, this tenth day of December, A. D. 1841.

JOHN JONES, *J. P.* [SEAL.]

Received 13th January, 1842, and recorded in book 83, page 206.
G. YEATMAN, *Recorder.*

And afterwards, to wit, on the thirty-first day of May, in the year of our Lord one thousand eight hundred and forty-three, came the de-

fendants, the President, Directors, and Company of the Northern Bank of Kentucky, by Messrs. Chase & Ball, their solicitors, and filed in the clerk's office aforesaid their answer to the bill of complaint, in the words and figures following, to wit:

Answer of the Northern Bank of Kentucky.

The separate answer of the President, Directors, & Company of the Northern Bank of Kentucky to the bill of complaint exhibited against them, the President, Directors, & Company of the Lafayette Bank of Cincinnati, and others, in this honorable court, by Nathaniel C. McLean, assignee in bankruptcy of the effects of John Mahard, jr.

These respondents, (a body corporate and politic, created by the laws of the State of Kentucky,) for answer to so much of said bill as they are advised it is material for them to answer, and reserving all exceptions to said bill, state that they believe it to be true, as stated in said bill, that, on the 27th day of May, 1842, the said John Mahard, jr., filed in the district court of the United States, within and for the district of Ohio, his petition for the benefit of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved August 19, 1841; and that such proceedings were afterwards had, that the said Mahard was by said court declared and decreed a bankrupt, and that said complainant was thereupon appointed his assignee.

And these respondents further answering admit, that on the 18th of March, 1842, the said John Mahard, jr., by deed of that date, duly executed, (a copy whereof is hereunto annexed and made part of this answer,) conveyed by way of mortgage to Andrew Johnson all the live stock and other personal property in said mortgage described, to indemnify and secure the said Andrew Johnson against certain claims then held by these respondents against the said Johnson, as endorser and security for the said John Mahard, jr., on certain drafts or bills of exchange drawn by the said John and one William Mahard, under the name of J. & W. Mahard, upon Mahard & Brother, New Orleans, amounting in the whole to the sum of fourteen thousand dollars and upwards, as stated in the condition of defeasance of said mortgage.

And respondents state that the said bills were as follows, to wit: one for four thousand and seventy-eight $\frac{48}{100}$ dollars, due the 4th of April, 1842; one for four thousand and seventy-eight $\frac{48}{100}$ dollars, due the 19th May, 1842; one for thirty-five hundred dollars, due 17th May, 1842; and the other for twenty-five hundred dollars, due 14th July, 1842; amounting in all to the sum of 14,156 $\frac{96}{100}$ dollars; all of which still remains unpaid, and on all of which said Johnson is legally liable as endorser. And respondents further answering admit, that the said personal property so mortgaged to said Johnson, was by an agreement made in writing between the said Johnson and the said Mahard, (a copy whereof is hereunto annexed and made part of this answer,) suffered to remain in the possession of said Mahard to be taken care of

land subject to be sold, and the proceeds thereof to be applied to the satisfaction of said debt. And respondents further answering state, that their co-defendant, John S. Buckingham, afterwards, to wit, at the April term, 1842, of the supreme court of the State of Ohio, within and for the county of Hamilton, obtained judgment by confession of John Mahard, jr., against the said John and William Mahard, for the sum of fourteen thousand eight hundred dollars damages, besides costs. Whereupon the said Buckingham caused execution to be issued, and on the 21st day of May, 1842, levied upon the property mortgaged by the said John Mahard, jr., to the said Johnson as aforesaid, and respondents insist that said judgment was confessed by said John Mahard, jr., less than sixty days before the date of his application for the benefit of said act, and that the same is a fraud upon said act, and is wholly void. Respondents further answering state, that afterwards, to wit, on the third day of June, 1842, by an instrument for that purpose duly executed, the said Johnson assigned and transferred to these respondents, upon certain terms and conditions therein expressed, all his estate and interest in said mortgage and said mortgaged property, and had a right to appropriate the proceeds thereof towards the satisfaction of their said debts; all which will fully appear on reference to said instrument, a copy whereof is hereunto annexed and made part of this answer. Respondents further answering admit, that they, together with the said Andrew Johnson, on or about the 7th day of June, 1842, filed their bill in the superior court of Cincinnati, on the chancery side of said court, the object of which was to cause the said John S. Buckingham to be perpetually enjoined from selling or disposing of, under his said execution, the said mortgaged property to the prejudice of these respondents, and for the appointment of a receiver to receive, sell, and take charge of the said mortgaged property; and that such proceedings were afterwards had in said cause, that the said mortgaged property was afterwards sold for the sum of thirteen hundred dollars, or thereabouts, and the proceeds thereof still remain for distribution according to law. Respondents state that the said superior court did afterwards, on the hearing of said cause, decree that the equity of the case was with the said Buckingham, but respondents have appealed from said decree to the supreme court of Ohio, whereby said decree of said superior court has become vacated, and said cause still remains undetermined in said supreme court. Respondents insist that the mortgage of said John Mahard, jr., so assigned them by said Johnson, was executed and delivered by said Mahard in good faith, and in accordance with the laws of the State of Ohio, and that the same is a good and valid lien upon the property so mortgaged and the proceeds thereof, and that they are entitled to have the whole of said proceeds applied towards the satisfaction of their said debt.

Respondents insist that said John Mahard, jr., did not contemplate taking the benefit of said act at the time of making said mortgage, and that he was not known or considered to be insolvent at the time of the making thereof. They deny all notice of any act of bankruptcy on

the part of said John Mahard, jr., prior to the date of his said application, and also all fraud and combination; and having fully answered, pray that they may be protected in their lawful rights, and that such a decree may be rendered as may be just and equitable.

CHASE & BALL,
Sols. for Northern Bank of Ky.

STATE OF KENTUCKY,
Fayette county, ss.

In testimony of the truth of the several matters and things in the foregoing answer set forth, the said the President, Directors, and Company of the Northern Bank of Kentucky, the respondents above named, by Matthew T. Scott, their cashier, have hereunto caused to be affixed their corporate seal, and the signature of their said cashier, this 22d day of May, A. D. 1843.

[L. S.]

M. T. SCOTT,
Cashier Northern Bank of Kentucky.

Copy of mortgage referred to in the foregoing answer.

Know all men by these presents, that I, John Mahard, jr., of the county of Hamilton, and State of Ohio, for and in consideration of the sum of fifteen thousand dollars to me in hand paid by Andrew Johnson, the receipt whereof is hereby acknowledged, do hereby bargain, sell, transfer, and convey, unto the said Andrew Johnson, his executors, administrators, and assigns, the following personal property, consisting principally of live stock, and all my interest and estate in the same, described as follows, viz: No. 1, Durham bull Prince Frederick, half mine; 2, Durham bull Napoleon, three years old; 3, Durham bull Marion, one year old; 4, Durham bull Fantastical, one year old; 5, Durham bull Cato, nine months old; 6, Durham bull Franklin, nine months old; 7, Durham bull Albion, four months old; 8, Durham bull Pilot, four months old; 9, Durham bull Pyon, four months old; 10, Durham cow Fortuna, imported, thorough breed; 11, Durham cow Lady Ann, imported, thorough bred; 12, Durham cow Juno, imported, thorough bred; 13, Dutchess, bred by Clarkson; 14, Kate Kearney, thorough bred; 15, Cornelia $\frac{15}{16}$ Durham, $\frac{1}{16}$ Pelton stock; 16, Ariadne, thorough bred; 17, Empress, thorough bred; 19, Verbina, thorough bred; 20, Vestus, half blood, three years old; 21, Maranda, thorough bred; 22, Lady Ellen, thorough bred, one year old; 23, Blandina, thorough bred, one year old; 24, Venus, thorough bred, one year old; 25, Queen of the West, thorough bred, nine months old; 26, Anna, thorough bred, nine months old; 27, Lavinia, thorough bred, for months old; (brought forward,) 28, Celestina, thorough bred, three months old; 29, Princess, thorough bred, two weeks old; 30, Florida, five years old; 31, six common cows; 32, thirty grown Berkshire sows; 33, one hundred Berkshire pigs, from two weeks to six months old; 33, eleven full blooded Berkshire barrows; 34, four imported Berkshire boars; 35, five horses and harness; 36, two wagons and fixtures; 37, five ploughs, two harrows, two hay rakes, hay riggings, one two-horse

carriage, one buggy, and all my farming utensils; 38, thirteen head of grown sheep and eight lambs. Provided, always, and these presents are upon this condition, that whereas Andrew Johnson is liable for me as endorser on J. & W. Mahard's drafts, drawn on Mahard & Brother, New Orleans, and endorsed without any consideration or value for so doing by said Andrew Johnson, for upwards of fourteen thousand dollars, which drafts were sold by me to the branch of the Northern Bank of Kentucky at Covington: Now, if the said J. & W. Mahard, or myself, John Mahard, or William Mahard, composing said partnership of J. & W. Mahard, pay said drafts, then these presents shall be void, otherwise they are to remain in full force, they being intended, and operating to protect and secure said Andrew Johnson as accommodation endorser of said drafts.

In witness whereof I have hereunto set my hand and seal this eighteenth day of March, A. D. 1842.

JOHN MAHARD, Jr. [SEAL.]

Possession of the foregoing property delivered by said John Mahard, jr., to Andrew Johnson, by the delivery of one horse and plough in the name of the whole, in presence of John Galt.

Agreement referred to in said answer.

For and in consideration of the fact that said John Mahard, jr., has agreed and bound himself to me to take proper care of the foregoing live stock and personal property, and feed and tend the same at his own expense; and in consideration of the character of the same, and believing it will be for my benefit, I do hereby authorize and empower him to make sales of the same, and any part thereof, as he may be able; with the express understanding, however, that I am to be consulted and advised with in so doing; and that the proceeds of any and all sales he may make are to be paid to me, or under my direction, towards the liquidation of the drafts endorsed by me, and sold as mentioned in the mortgage to the branch of the Northern Bank of Kentucky, at Covington, Kentucky, to secure me as endorser of which said mortgage was by me taken. (See said mortgage on the other half of this sheet.)

In witness whereof I have hereunto set my hand and seal, this the eighteenth day of March, A. D. 1842.

ANDREW JOHNSON. [L. S.]

Witness:
JOHN GALT.

Instrument of assignment referred to.

For a valuable consideration received by me of the Northern Bank of Kentucky, at their branch at Covington, Kentucky, I hereby transfer, assign, and set over, all my right, title, and interest, both legal and

equitable, to the within mortgage, and the property therein described, to and for the use and benefit of said bank forever.

In witness whereof I hereto set my hand and seal, this third day of June, 1842.

ANDREW JOHNSON. [SEAL.]

Witness:
JAS. J. FARAN,
H. J. GROESBECK.

And afterwards, to wit, on the twenty-ninth day of June, in the year of our Lord one thousand eight hundred and forty-three, came the defendants, the trustees of the Franklin Bank of Cincinnati, by W. S. Groesbeck, esq., their solicitor, and filed in the clerk's office aforesaid their answer to said bill of complaint, in the words and figures following, to wit:

Answer of the Franklin Bank of Cincinnati.

The joint and several answer of John H. Groesbeck, John C. Culbertson, John Kilgour, David Loring, William S. Groesbeck, Fenton Lawson, and Lewis Whiteman, trustees of the late "The Franklin Bank of Cincinnati," to the bill of complaint exhibited against them and others by Nathaniel C. McLean, complainant. The above respondents, for answer to so much of said complainants' bill as they are advised it is material for them to answer, come and say, that they know nothing of the matters and things in general set forth in said bill, except from hearsay, and can neither admit or deny them, and require the necessary proof of the same.

These respondents, trustees as aforesaid, admit that they are interested in the portion of said John Mahard's property hereinafter set forth, and represent that the said John Mahard, jr., (whom the complainant alleges to have been declared a bankrupt,) on the third day of April, A. D. 1841, duly executed, acknowledged, and delivered, in connexion with his wife, Mary K. Mahard, to the President, Directors, and Company of the Franklin Bank of Cincinnati, (a corporation created by a law of the State of Ohio, whose charter ended on the 1st of January, 1843,) his certain deed of mortgage of that date, and therein bargained, sold, and conveyed to them, the said the President, Directors, and Company of the Franklin Bank of Cincinnati, in fee simple, the following real estate, with all the buildings and improvements thereon, situate in the city of Cincinnati, county of Hamilton, and State of Ohio, and described as follows: First, all that part of in-lot numbered on the original plan of said city four hundred and sixty, (460,) which was conveyed to said John Mahard, jr., by John Mahard, by two deeds, dated, one in October, 1838, and recorded in book No. 29, page 251, of said Hamilton county records, and the other in February, A. D. 1837, and recorded in book No. 62, page 236, of same records; excepting therefrom that part of said in-lot conveyed previously by said John Mahard,

jr., to William Mahard, by deed recorded in book No. 68, page 504, of same records, the part excepted being about twenty-three feet on Water street by about one hundred feet in depth; second, all that part of in-lot numbered on the original plan of said city four hundred and four, (404,) which was conveyed to said John Mahard, jr., by John Mahard, by deed, recorded in book No. 62, page 236, of said Hamilton county records, and by the President, Directors, and Company of the Bank of the United States, by deed recorded in book No. 34, page 282, of same records, with all the privileges and appurtenances to the same belonging; therein covenanting, also, that the title so conveyed was clear, free, and unincumbered, and that he would warrant and defend the same against all claims whatsoever; but upon the condition, nevertheless, that if the said John Mahard, jr., should pay or cause to be paid unto the said the President, Directors, and Company of the Franklin Bank of Cincinnati, all sums of money which he was under obligations, at the date of said mortgage, to pay, either as maker or endorser of any promissory note or notes, and as drawer, acceptor, and endorser of any bill or bills of exchange, or either of them, as they severally become due and payable, and should pay and discharge all his indebtedness, of whatever kind, and liabilities to them, and all other indebtedness and liabilities, of whatsoever kind, he might, subsequently to the date of said mortgage, incur and come under to them, then said deed was to be void, but otherwise to be and remain in full force and effect; all which will more fully appear from a copy of said mortgage herewith filed, marked A, and made part hereof.

Your respondents further show and aver, that said mortgage was delivered at its date, and duly recorded, on the eighteenth day of October, A. D. 1841, in book No. 80, page 592, of said Hamilton county records, as will fully appear from the records and the recorder's certificate endorsed on the same, a copy of which is herewith filed, marked B, and made part hereof.

Your respondents further show, that at the date and delivery of said mortgage, to wit, on the third day of April, A. D. 1841, the said John Mahard, jr., was indebted to said the President, Directors, and Company of the Franklin Bank of Cincinnati, and justly, in the sum of sixteen thousand six hundred and fifty-two dollars, according to the tenor and effect of his bills of exchange and notes of hand, as follows:

John Mahard, jr., and William Mahard's bill of exchange, under their partnership name of J. & W. Mahard, for $7,000 00, dated Cincinnati, November 13th, 1840, drawn on Mahard & Brother of New Orleans, and payable six months after date to the order of John McLaughlin, and endorsed by him and Andrew Johnson, to said Franklin Bank; also said J. & W. Mahard's bill of exchange on said Mahard & Brother of New Orleans, for $5,200 00, dated Cincinnati, March, 30th, 1841, and payable four months after date to the order of Andrew Johnson, and endorsed by him to said bank; also said J. & W. Mahard's bill of exchange on J. & J. Mahard, for $1,160 00, dated Cincinnati, March 1st, 1841, and payable four months after date to John Mc-

Laughlin, and endorsed by him to said bank; also said J. & W. Mahard's note of hand for $389 00, dated Cincinnati, March 6th, 1841, and payable ninety-five days after date to the order of John McLaughlin, and endorsed by him and Andrew Johnson to said bank; also said J. & W. Mahard's note for $764 00, dated March 27th, 1841, and payable ninety-five days after date to the order of John McLaughlin, and endorsed by him and Andrew Johnson to said bank; also said J. & W. Mahard's note for $1,184 00, dated December 30th, 1840, and payable ninety-five days after date to the order of Andrew Johnson, and endorsed by him and John McLaughlin to said bank; also said J. & W. Mahard's note for $955 00, dated March 20th, 1841, and payable ninety-five days after date to the order of John McLaughlin, and endorsed by him and Andrew Johnson to said bank; all of which notes and bills your respondents aver were, and are, covered by said mortgage; your respondents further show, that said bill for $7,000 00 has been paid, and that the above bill for $5,200 00 was duly accepted by the drawees thereof, and that at the maturity thereof, to wit, on the 2d day of August, 1841, they caused the same to be presented at the store of said Mahard & Brother, in New Orleans, for payment, and its payment to be then and there demanded of them, which was refused, and then and there they caused the same to be protested for non-payment; of all which the drawers and endorsers thereof were then and there, on the day and year last aforesaid, duly notified; your respondents now hold said bill; your respondents further show that the aforesaid bill for $1,160 00 was not paid in full, and that at the request of the parties to the same, and for their special accommodation, and with the understanding that the debt thereof was to remain covered by said mortgage, was renewed, the same for $940 00, and they now hold said J. & W. Mahard's bill of exchange for $940 00, dated Cincinnati, March 9th, 1842, drawn on J. & J. Mahard, and payable four months after date to the order of John McLaughlin, and endorsed by him to Andrew Johnson, and by him to said bank; your respondents further state, that the same is a renewal of and for the unpaid balance of said bill for $1,160 00, that the same was duly accepted by its drawees, and that the said John Mahard, jr., was, at that time, one of the firm of J. & J. Mahard, the drawees and acceptors thereof; your respondents further show, that said note for $389 00 was not paid in full, and that at the request of, and for the accommodation of, the parties to the same, the same was renewed for $283 00, and respondents now hold the note of said J. & W. Mahard for $283 00, dated Cincinnati, 2d April, 1842, and payable ninety-five days after date to the order of Andrew Johnson, and endorsed by him to John McLaughlin, and by him to said bank; which note is a renewal of, and for the unpaid balance of, said note for $389 00; your respondents further shew, that said notes for $764 00, $1,184 00, and $955 00, were not paid in full, and that at the request and for the accommodation of the parties to the same the same were renewed, and your respondents now hold said J. & W. Mahard's note for $556 00, dated Cincinnati, 15th January, 1842, and

payable ninety-five days after date to the order of Andrew Johnson, and endorsed by him and John McLaughlin to said bank, which note is a renewal of and for the unpaid balance of said note for $764 00; also said J. & W. Mahard's note for $862 00, dated Cincinnati, 26th January, 1842, and payable ninety-five days after date to the order of Andrew Johnson, and endorsed by him and John McLaughlin to said bank, which note for $862 00 is a renewal of said note for $1,184 00; also said J. & W. Mahard's note for $773 00, dated Cincinnati, October 2d, 1841, and payable ninety-five days after date to the order of Andrew Johnson, and endorsed by him and John McLaughlin to said bank, which note for $773 00 is a renewal of said note for $955 00.

Your respondents further state, that after the date and delivery of said mortgage, and before the said John Mahard, jr., had executed any subsequent mortgage whatever on said property, the said Mahard became further indebted, and additionally to said bank, the Franklin Bank of Cincinnati, in the several amounts, and according to the tenor and effect of the following bills of exchange and notes of hand: First, the said J. and W. Mahard's bill of exchange for $2,000, dated Cincinnati, 15th May, 1841, drawn on Mahard & Brother, in New Orleans, and payable five months after date to the order of Andrew Johnson, and endorsed by him and John Mahard, jr., to said bank. Also said J. and W. Mahard's bill of exchange for $1,205 00, dated Cincinnati, June 23d, 1841, drawn on Mahard & Brother, in said New Orleans, and payable four months and ten days after date to the order of Andrew Johnson, and endorsed by him to said bank. Also said J. and W. Mahard's bill of exchange for $6,150 00, dated Cincinnati, 24th July, 1841, drawn on said Mahard & Brother, in said New Orleans, and payable four months after date to the order of Andrew Johnson, and endorsed by him and John Mahard, jr., to said bank. Also said J. and W. Mahard's bill of exchange for $5,710 00, dated Cincinnati, 4th of August, 1841, drawn on Mahard & Brother, in said New Orleans, and payable four months and ten days after date to the order of Andrew Johnson, and endorsed by him and John Mahard, jr., to said bank. And said J. and W. Mahard's bill of exchange, on said Mahard & Brother, in said New Orleans, for $1,237 00, dated Cincinnati, October 6th, 1841, and payable four months after date, to the order of Stubbs and Andrew, and endorsed by them to said bank. Also William John McArtney's, bill of exchange on said Mahard & Brother, in New Orleans, for $650 00, dated Cincinnati, 27th of October, 1841, and payable five months after date to the order of J. & W. Mahard, and endorsed by them to said bank. Also John Stubbs' bill of exchange on said Mahard & Brother, in said New Orleans, for $1,820 00, dated 17th November, 1841, Cincinnati, and payable four months after date to the order of Stubbs and Andrew, and endorsed by them and by said J. and W. Mahard to said bank. Also Levi Ashbrook's draft on Mahard & Brother, in said New Orleans, for $800, dated Cincinnati, 9th December, 1841, and payable three months after date to the order of J. and W. Mahard, and endorsed by

them and by Andrew Johnson to said bank. Also J. and W. Mahard's note for $695,00, dated Cincinnati, 8th of January, 1842, and payable ninety-five days after date to the order of Andrew Johnson, and endorsed by him and by John McLaughlin to said bank. Your respondents further represent, that the aforesaid bills of exchange, for $2,000 00, for $1,205 00, for $6,150 00, for $5,710 00, for $1,237 00, for $650 00, and for $800 00, were each and all of them duly accepted by the drawees thereof; that the said bill for $1,820 00, dated 17th of November, 1841, was duly presented on the 3rd day of December, 1841, at the store of said Mahard & Brother, at New Orleans, on whom it was drawn, and acceptance thereof was, then and there, demanded of them, which was refused, and same was not then and there accepted, and thereupon the same was then and there protested for non-acceptance; of all which the drawers and endorsers thereof were then and there, on the day and year last aforesaid, and duly and legally notified.

Your respondents further represent, that on their several days of maturity, viz., that for $2,000 00 on the 18th day of October, 1841; that for $1,205 00 on the 5th day of November, 1841; that for $1,237 00 on the 9th of February, 1842; that for $650 00 on the 2d of March, 1842; and that for $1,820 00 on the 19th of March, 1842; each one of said bills on the day of its own maturity was presented at the counting-room of said Mahard & Brother, in said New Orleans, for payment, and payment of each one on the day of its maturity aforesaid was then and there demanded of them, which was refused of each bill at the different times they were presented, and thereupon each and every one of said drafts, on the said day of its presentment and refusal of payment, was there severally and individually protested for non-payment; of all which the drawers and endorsers thereof were then and there severally, and duly, and legally notified. Your respondents further show, that said note for $895 00, at its maturity, to wit, on the 16th of April, 1842, was duly presented at the Franklin Bank of Cincinnati, the place where payable, for payment, which was refused; of all which the parties to same were then and there, and legally, and duly notified. Your respondents further show, that the said John Mahard, jr., was, at the time of the drawing of the bills of exchange herein mentioned, and the acceptance and maturity of the same, and for a long time after, one of the firm and partnership of Mahard & Brother, of New Orleans, herein mentioned. Your respondents further represent, that subsequent to their mortgage, the said John Mahard, jr., conveyed the part of in-lot No. 404, he had mortgaged to them, to Charles B. Dyer, and that said bank, which your respondents represent at the urgent request of said Mahard, and believing that it would be an advantageous sale, agreed to, and did release from the incumbrance of their mortgage, on the 8th day of March, A. D. 1842, said part of in-lot No. 404, upon the terms hereinafter set forth. They state that the terms were, that they should receive seven thousand two hundred and ninety-seven dollars and thirty-three cents of the

purchase money of said property; and your respondents admit that they did, in notes and money, receive that amount, which is a just credit, and has been credited upon certain indebtedness of the said John Mahard, jr., herein before set forth. Your respondents insist and claim, that they had, under the circumstances, a perfect right and full power to release said property from the incumbrance of their mortgage, and that, in doing so, they did no injury, and were guilty of no injustice whatever towards any person, and that they cannot be held to account to the creditors of said Mahard for their doings in the premises, and claim that they ought not to be compelled to credit said Mahard in a larger amount than they actually received as a consideration for said release. Your respondents represent that, at the time of said release, they had no knowledge or notice of the mortgages subsequently given by said Mahard to other creditors, and that the consideration which they received on said release was a just and full equivalent for said property; that the same was more than its cash value; that the $10,000 for which said property was sold was not paid in cash, and but little more than one-third of it was. They represent that said transaction was, in truth, favorable to the interest of the other creditors of said Mahard; that the amount they received was more than the property would have brought at a judicial sale at that or any subsequent time; that real estate was then rapidly depreciating in value, and has been ever since; and they claim that they ought not to be compelled to credit more upon their debt than the amount they received, and that no subsequent mortgages can, under the circumstances, require them to do so. They represent that the $729,733 is not yet paid by about $1,600 00, and that the Buckinghams, their co-defendants, received the balance of the $10,000 for which said property was sold.

They further admit that there has been received from said Mahard, on his indebtedness to them since the execution of said mortgage, the sum of $2,700 00; there was paid also on said note for $773 00, herein set forth, in all $475 00. They further represent, that on or before the 8th day of March, 1842, they closed an agreement with said Mahard to take of him twenty shares of the capital stock of the Franklin Bank of Cincinnati, at their par value, 100 dollars per share; they represent, however, that John Mahard, sen., pretends to have some claim upon the same, on account of some payment made, as he says, for said John Mahard, jr., and has filed his bill against your respondents and others in the superior court of Cincinnati, of Hamilton county, and State of Ohio, to enjoin the transaction, and have said stock taken away from your respondents and applied to his alleged claim, and your respondents have not yet received the transfer of the same, and are not quietly possessed. Your respondents say that they are willing to take the same under said arrangement, and claim additionally to have a lien upon the same by virtue of the charter of said bank they represent. Your respondents represent that the foregoing payments are all that have been made upon the bills and notes herein before set forth. That each and all of them are for money loaned; that they were all given before

said Mahard gave any subsequent mortgage; that they are all past due with a large amount of interest; that the parties to the same have not paid the same or any part thereof, though often requested, and still refuse so to do; by means of which your respondents' estate in the premises has become absolute at law, though redeemable in equity, as to each and all of them, and they are each and all of them a just charge, and the first and oldest lien upon the premises, and they claim that they are to be first satisfied. Your respondents further represent, that at the time of the execution and delivery of the said mortgage herein set forth, the said mortgagor was in high commercial credit and standing, and universally believed to be wealthy. They state the same was given before the passage of the Bankrupt act, under which it is claimed said Mahard has been decreed a bankrupt without contemplation of bankruptcy, and was received by the mortgagees in perfect good faith, and with no reference to or thought of the bankruptcy of said mortgagor. They represent that, after said mortgage was given thereafter, advances herein set forth were made upon the credit of the same, and relying upon it for security, but with the belief that said Mahard was perfectly solvent at the time same were made. That at the date of said mortgage said Mahard was largely indebted to them, and they demanded a mortgage to secure the same, and any other sums of money that might be loaned to him; and said mortgage was furnished them upon such understanding, that all of their transactions herein set forth and mentioned were made and entered into in perfect good faith, and with no notice of the bankruptcy, or the intention of said party to avail himself of the Bankrupt act, and more than two months before the filing of his petition, and that they had no notice of such intention before said petition was actually filed.

Your respondents further represent, that on or about the 19th day of October, A. D. 1842, possession of said property on the southwest corner of Walnut and Water streets was delivered to said bank they represent, and that they continued to hold the same, while in existence, and your respondents ever since; that their co-defendants, the Buckinghams, gave them possession, and the same was rented at the rate of $600 00 per annum; and on the 19th of April, 1843, your respondents received $300 00 of said rent; your respondents further show that they had *same* the same insured in the amount of $4,000 00, at the rate of $\frac{8}{10}$ per cent., which insurance expires on the 3d day of September, 1843. Your respondents further represent, that the term of the charter of the said the Franklin Bank of Cincinati expired on the 31st day of December, 1843, and that the President, Directors, and Company of said bank, under and in pursuance of the directions of a meeting of the stockholders of same, regularly called and held at Cincinnati, on the 28th day of December, 1842, conveyed all the assets of said bank involved in any way in suit in the State of Ohio, by deed duly executed on 31st day of December, 1842; they represent that at that time several suits had been commenced, to which said bank was a party, and in which its claim against said Mahard, herein set forth, was involved. That said conveyance of such

property was made to John H. Groesbeck, John C. Culbertson, John Kilgour, David Loring, William S. Groesbeck, Fenton Lawson, and Lewis Whiteman, in trust, among other things, for the creditors and stockholders of said bank; all which will more fully appear from a copy of said deed of assignment hereunto annexed, marked C, and made part hereof; under which said deed and a law of the State of Ohio, passed March 7, 1842, for the winding up of dissolved corporations, and other purposes, your respondents appear and answer as trustees in this matter of said bank. Your respondents having thus answered all that they are advised it is material to answer, reserving at same time all manner of exceptions, deny all fraud, and reserving the right to further answer should it become material for them, pray that they may be fully protected in their rights as herein claimed, and to the fullest extent they are entitled to be protected, and that they may go hence with their reasonable costs, &c.

W. S. GROESBECK, *Sol'r.*

John H. Groesbeck, John C. Culbertson, John Kilgour, David Loring, William S. Groesbeck, Fenton Lawson, and Lewis Whiteman, defendants, say severally, upon oath, that the matters set forth in the foregoing answer upon their behalf are true as therein stated, to the best of their individual knowledge, information, and belief.

J. H. GROESBECK,
DAVID LORING,
JNO. KILGOUR,
J. C. CULBERTSON,
FENTON LAWSON,
L. WHITEMAN,
W. S. GROESBECK.

Sworn to and subscribed before me, this 27th day of June, 1843.

EBENEZER HARRISON, *J. P.*

The following are the exhibits referred to in the foregoing answer:

Exhibit A.

John Mahard, jr., mort. to Franklin Bank of Cincinnati.

Know all men by these presents that I, John Mahard, jr., of Cincinnati, Hamilton county, Ohio, for and in consideration of the sum of twenty-five thousand dollars, to me in hand well and truly paid by the President, Directors, and Company of the Franklin Bank of Cincinnati, the receipt whereof is hereby acknowledged, do hereby bargain, sell, and convey, unto the said the President, Directors, and Company of the Franklin Bank of Cincinnati, *the receipt whereof is hereby acknowledged, do hereby bargain, sell, and convey, unto the said the President, Directors, and Company of the Franklin Bank of Cincinnati,* their successors and assigns forever, the following real estate,

said Mahard gave any subsequent mortgage; that they are all past due with a large amount of interest; that the parties to the same have not paid the same or any part thereof, though often requested, and still refuse so to do; by means of which your respondents' estate in the premises has become absolute at law, though redeemable in equity, as to each and all of them, and they are each and all of them a just charge, and the first and oldest lien upon the premises, and they claim that they are to be first satisfied. Your respondents further represent, that at the time of the execution and delivery of the said mortgage herein set forth, the said mortgagor was in high commercial credit and standing, and universally believed to be wealthy. They state the same was given before the passage of the Bankrupt act, under which it is claimed said Mahard has been decreed a bankrupt without contemplation of bankruptcy, and was received by the mortgagees in perfect good faith, and with no reference to or thought of the bankruptcy of said mortgagor. They represent that, after said mortgage was given thereafter, advances herein set forth were made upon the credit of the same, and relying upon it for security, but with the belief that said Mahard was perfectly solvent at the time same were made. That at the date of said mortgage said Mahard was largely indebted to them, and they demanded a mortgage to secure the same, and any other sums of money that might be loaned to him; and said mortgage was furnished them upon such understanding, that all of their transactions herein set forth and mentioned were made and entered into in perfect good faith, and with no notice of the bankruptcy, or the intention of said party to avail himself of the Bankrupt act, and more than two months before the filing of his petition, and that they had no notice of such intention before said petition was actually filed.

Your respondents further represent, that on or about the 19th day of October, A. D. 1842, possession of said property on the southwest corner of Walnut and Water streets was delivered to said bank they represent, and that they continued to hold the same, while in existence, and your respondents ever since; that their co-defendants, the Buckinghams, gave them possession, and the same was rented at the rate of $600 00 per annum; and on the 19th of April, 1843, your respondents received $300 00 of said rent; your respondents further show that they had *same* the same insured in the amount of $4,000 00, at the rate of $\frac{8}{10}$ per cent., which insurance expires on the 3d day of September, 1843. Your respondents further represent, that the term of the charter of the said the Franklin Bank of Cincinati expired on the 31st day of December, 1843, and that the President, Directors, and Company of said bank, under and in pursuance of the directions of a meeting of the stockholders of same, regularly called and held at Cincinnati, on the 28th day of December, 1842, conveyed all the assets of said bank involved in any way in suit in the State of Ohio, by deed duly executed on 31st day of December, 1842; they represent that at that time several suits had been commenced, to which said bank was a party, and in which its claim against said Mahard, herein set forth, was involved. That said conveyance of such

property was made to John H. Groesbeck, John C. Culbertson, John Kilgour, David Loring, William S. Groesbeck, Fenton Lawson, and Lewis Whiteman, in trust, among other things, for the creditors and stockholders of said bank; all which will more fully appear from a copy of said deed of assignment hereunto annexed, marked C, and made part hereof; under which said deed and a law of the State of Ohio, passed March 7, 1842, for the winding up of dissolved corporations, and other purposes, your respondents appear and answer as trustees in this matter of said bank. Your respondents having thus answered all that they are advised it is material to answer, reserving at same time all manner of exceptions, deny all fraud, and reserving the right to further answer should it become material for them, pray that they may be fully protected in their rights as herein claimed, and to the fullest extent they are entitled to be protected, and that they may go hence with their reasonable costs, &c.

W. S. GROESBECK, *Sol'r.*

John H. Groesbeck, John C. Culbertson, John Kilgour, David Loring, William S. Groesbeck, Fenton Lawson, and Lewis Whiteman, defendants, say severally, upon oath, that the matters set forth in the foregoing answer upon their behalf are true as therein stated, to the best of their individual knowledge, information, and belief.

J. H. GROESBECK,
DAVID LORING,
JNO. KILGOUR,
J. C. CULBERTSON,
FENTON LAWSON,
L. WHITEMAN,
W. S. GROESBECK.

Sworn to and subscribed before me, this 27th day of June, 1843.

EBENEZER HARRISON, *J. P.*

The following are the exhibits referred to in the foregoing answer:

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John Mahard, jr., mort. to Franklin Bank of Cincinnati.

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with all the buildings and improvements thereon, situate in the city of Cincinnati, county of Hamilton, and State of Ohio, and described as follows:

First, all that part of in-lot numbered on the original plan of said city four hundred and sixty (460), which was conveyed to me by John Mahard, as per deed recorded in book No. 29, page 251, and book No. 62, page 236, of Hamilton county records, saving and excepting that part of said in-lot conveyed by me to William Mahard, as per deed recorded in book No. 68, page 504, the part of in-lot 460 hereby conveyed, being more particularly described as follows, viz.: Beginning at the southwest corner of Walnut and Water streets; thence southwardly with the west line of Walnut street, to the Ohio river; thence westwardly with the river's edge one hundred feet, more or less, to the west line of said in-lot No. 460; thence northwardly to the southwest corner of Dyer's lot; thence probably eastwardly fifty-three feet; thence northwardly to the south line of Water street, and thence eastwardly, about forty-six feet on Water street, to the place of beginning. Also all that other lot, with the buildings and improvements thereon, situate as above, and being that part of in-lot numbered on the original plan of said city four hundred and four (404), which was conveyed to me by John Mahard, as per deed recorded in book No. 62, page 236, and by the United States Bank, as per deed recorded in book No. 34, page 282, and described more particularly as follows: Beginning at the northeast corner of Walnut and Water streets; thence running eastwardly, with the north line of Water street, seventy-four feet; thence northwardly, at right angles with Water street, fifty-two feet; thence eastwardly, parallel with Water street, ten feet; thence northwardly, parallel with Walnut street, six feet; thence westwardly, parallel with Water street, eighty-four feet, to Walnut street; thence southwardly, with the line of Walnut street, fifty-seven feet and a half, to the place of beginning; together with all the privileges and appurtenances to the same belonging.

To have and to hold the same to the said the President, Directors, and Company of the Franklin Bank of Cincinnati, their successors, and assigns, forever; hereby covenanting that the title so conveyed is clear, free, and unencumbered, and that he will warrant and defend the same against all claims whatsoever. Provided, always, that if the said John Mahard, jr., shall pay, or cause to be paid, unto the said the President, Directors, and Company of the Franklin Bank of Cincinnati, all sums of money which he is now under obligations to them to pay, either as maker or endorser of any promissory note or notes, and as drawer, acceptor, and endorser of any bill or bills of exchange, or either of them, as they severally become due and payable, and shall pay and discharge all his indebtedness, of whatsoever kind, and liabilities to them, now amounting to about sixteen thousand dollars, and all other indebtedness and liabilities, of whatever kind, he may hereafter incur and come under to them, according to their tenor and effect, then these presents shall be void, but otherwise to be and remain in full force and effect.

In witness whereof the said John Mahard, jr., and Mary K. Mahard, wife of said John Mahard, jr., who hereby forever relinquishes her dower in said premises, have hereunto set their hands and seals, this the third day of April, in the year of our Lord eighteen hundred and forty-one.

JOHN MAHARD, JR., [SEAL.]
MARY K. MAHARD. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN JONES,
WILLIAM MCAFEE.

STATE OF OHIO, *Hamilton county, ss.*

Be it remembered, that on this the third day of April, in the year of our Lord eighteen hundred and forty-one, before me, the subscriber, a justice of the peace in and for said county, personally came John Mahard, jr., and Mary K. Mahard, the grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed for the uses and purposes therein mentioned; and the said Mary K. Mahard, wife of said John Mahard, jr., being examined by me separate and apart from her said husband, and the contents of said deed being made known and explained to her, declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith as her voluntary act and deed for the uses and purposes therein named.

In testimony whereof I have hereunto subscribed my name and affixed my seal, on the day and year last aforesaid.

JOHN JONES, *J. P.* [SEAL.]

Exhibit B.

No. 1. Received and recorded in book No. 80, page 592, on the 18th of October, 1841.

Exhibit C.

This indenture, made this thirty-first day of December, in the year of our Lord one thousand eight hundred and forty-two, by and between the President, Directors, and Company of the Franklin Bank of Cincinnati, of the first part, and John H. Groesbeck, John C. Culbertson, and John Kilgour, David Loring, William S. Groesbeck, Fenton Lawson, and Lewis Whiteman, of the second part. Whereas the term of the charter of the said Franklin Bank of Cincinnati is about to expire, and a law was passed by the legislature of the State of Ohio, March the seventh, eighteen hundred and forty-two, providing among other things for the regulations of corporations generally, and especially of corporations whose charters have expired. Now, this indenture witnesseth, that in furtherance of said law, the said the President, Directors, and Company of the Franklin Bank of Cincinnati, for and in consideration of the sum of one dollar, to them in hand well and truly paid by the

said John H. Groesbeck, John C. Culbertson, John [illegible], David Loring, William S. Groesbeck, Fenton Lawson, and Lewis Whiteman, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, conveyed, delivered, assigned, transferred, and set over, and by these presents do give, grant, bargain, sell, convey, deliver, assign, transfer, and set over, to the said John H. Groesbeck, John C. Culbertson, John Kilgour, David Loring, William S. Groesbeck, Fenton Lawson, and Lewis Whiteman, their survivors and survivor, his heirs and assigns, forever, all and singular the lands, tenements, hereditaments, goods, chattels, moneys, credits, assets, property, and effects of the said party of the first part, as contained, described, and set forth in a certain schedule hereunto annexed, marked A, sealed with the seal of the said party of the first part, and bearing even date herewith, together with all the deeds, papers, and evidences belonging or relating thereto, and also all other property and effects belonging to said party of the first part, not assigned by deed of even date herewith, by the said party of the first part, to other trustees than those herein mentioned; the said property hereby assigned embracing all the judgments and decrees in which said party of the first part is interested, and the property involved in the same; that is, the judgments and decrees had and obtained in any and all of the courts of law and chancery in the State of Ohio, and all other property now in suit in any way in said State of Ohio, and not under judgment and decree, and all other property not included in the other deed of assignment hereinafter alluded to.

To have and to hold the premises hereby granted, or meant or intended so to be, to the said party of the second part, their survivors and survivor, his heirs and assigns, to and for their and his own use and benefit forever, as joint tenants and not as tenants in common. In trust, nevertheless, to and for the following uses, purposes, and trusts, and to and for no other, that is to say, first, to hold the property hereby granted in trust for the Franklin Bank of Cincinnati, in case its charter shall be extended or renewed, and also for any bank law or charter that may be passed and accepted by the stockholders of said bank; and in the event of the charter of the said Franklin Bank of Cincinnati being renewed or extended, or of a bank law or charter being passed, that may be accepted, then the said trustees shall forthwith reconvey to said bank, or transfer, to meet such end, all the remaining property and effects in their hands; and with a view to such an event, and until it transpires, they are to manage the property hereby granted, in the manner hereinafter pointed out; and in the next place, and subject to the above trust, in trust for the creditors and stockholders of said bank; and the said trustees are empowered and directed to manage the assets herein entrusted to them, according to their best judgment and discretion; to carry on, proceed in, and close up the suits, judgments, and decrees, and reduce and convert the same into money, or other property, as they may seem fit; to bid in property on sales, and under such judgments and decrees, and the same to sell again, in fee simple or otherwise, at public or private sale, for the best price that can be had for the

sums, for cash or on credit, as may seem to them most expedient, and give full and sufficient receipts and acquittances for the purchase money; and generally to manage and take care of the same until sold; to collect and receive the moneys due and involved in said suits, judgments, and decrees; to compromise, take collateral securities, or new securities for any and all of the claims to which said suits relate, and discontinue the suits, and dismiss, settle, and withdraw the same; and make any arrangement in relation to the claims and suits themselves, which to them shall seem expedient, as fully as the directors of the bank would be authorized by its present charter, and as they may consider for the best interests of their trusts.

It is provided, however, that the trustees herein named shall pay over and transfer to the general trustees of said bank, created by a separate deed of trust of even date herewith, all moneys and property, of every description, which may be realized and arise out of the suits, judgments, and decrees, hereby assigned to them; and be and remain subject to their said general trustees' control and direction, so far as the law herein referred to shall allow: provided, also, that the proceedings of the within trustees shall be subject to the control and supervision of the stockholders, to be called by them, the general trustees, or any three or more stockholders, owning, together, one hundred shares of capital stock, in the manner pointed out in the present charter; and provided, also, that this assignment is subject to be altered, annulled, or added to, by any future meeting of the stockholders, in which a majority of the stock is represented, called in the manner pointed out in the charter by the within trustees, the general trustees, or any three or more stockholders owning together one hundred shares of capital stock.

And it is hereby agreed between the parties to these presents, that the said trustees shall not be answerable for the acts, omissions, or defaults of each other, but each only for his own acts, omissions, or defaults; and that they shall not be answerable for the misconduct, omission, or default of any agent or agents they may find it necessary to employ, being accountable only for the exercise of fair and reasonable skill and judgment, as well in the appointment of such agent or agents, as in the general management of the trust hereby created; and said trustees are authorized and empowered to appoint any and such agents or agent as they may think necessary, and the same to remove at their pleasure. And said trustees are empowered to do and act generally as fully and effectually in the premises as they, the said party of the first part, might or could do under the charter of said bank, subject to the supervision, direction, and control hereinbefore mentioned. The assets hereby granted shall be for distribution in the order and manner pointed out in the law hereinbefore referred to, unless transferred and paid over to the general assignees and trustees of said bank.

In testimony whereof the said the President, Directors, and Company of the Franklin Bank of Cincinnati have caused the corporate

seal of said bank, and the signature of John H. Groesbeck, their president, to be hereunto affixed, on the day and year first before written.

J. H. GROESBECK, *President.*

Signed, sealed, acknowledged, and delivered in presence of us—
W. A. O. HARRA,
WM. B. WOOD.

STATE OF OHIO, *Hamilton county, ss.*

Be it remembered, that on this the thirty-first day of December, eighteen hundred and forty-two, before me, the subscriber, an acting notary public in and for said county, came the President, Directors, and Company of the Franklin Bank of Cincinnati, the grantors in the above conveyance, by John H. Groesbeck, their president, and acknowledged the [same] to [be] their voluntary act and deed for the uses and purposes therein named, and that the seal thereunto annexed was the corporate seal of said bank.

In witness whereof I have hereunto subscribed my name and affixed my notarial seal, on the day and year last above written.

A. J. WHEELER, *Notary Public.*

Order of court.

And afterwards, to wit, on the fourth day of July, being at the July term of said court, in the year of our Lord one thousand eight hundred and forty-three, on motion to the court, and with consent of assignee, John H. Groesbeck, John C. Culbertson, John Kilgour, David Loring, Fenton Lawson, Lewis Whiteman, and William S. Groesbeck, as trustees of the late the Franklin Bank of Cincinnati, are made parties to the above cause, and answer filed and received.

And afterwards, to wit, on the eighteenth day of July, being at the July term last aforesaid of said court, came the said respondents, John S. and Mark Buckingham, by Wm. M. Corry, esq., their solicitor, and filed in court here the motion of the said Buckingham to dissolve the injunction herein; which said motion is in the words and figures following, to wit:

Motion to dissolve injunction.

JOHN S. BUCKINGHAM, and others, ads.
NATH'L C. MCLEAN, assignee. } In chancery.

In this cause the counsel for the defendants, John S. Buckingham and Mark Buckingham, move to dissolve the injunction so far as the proceeds of the personal property of the bankrupt, John Mahard, jr., is concerned, now enjoined in the hands of John C. Avery, sheriff.

W. M. CORRY,
Solicitor for the Buckinghams.

And afterwards, to wit, on the twenty-first day of July, being at the

[illegible] last aforesaid of said court, came the defendant, John Mahard, senr., and filed in court here his answer to said bill of complaint, in the words and figures following, to wit:

Answer of John Mahard, senr.

The separate answer of John Mahard, senior, to the bill of complaint exhibited against the Lafayette Bank of Cincinnati, Andrew Johnson, John S. Buckingham, and others, by Nathaniel C. McLean, assignee of John Mahard, junior.

This respondent, for answer to said bill says, that on the fifteenth day of February, in the year eighteen hundred and thirty-seven, the said John Mahard, jr., by deed bearing that date, conveyed to respondent all the following described lot of ground, with the buildings and improvements thereon, situate, lying, and being on the southwest corner of Water and Walnut streets, in the city of Cincinnati, being a part of lot number four hundred and sixty, beginning at the corner of Water and Walnut streets, and running thence westwardly, on the south line of Water street, seventy-feet, be the same more or less, to the northeast corner of Charles B. Dyer's lot; thence southwardly, with said Dyer's line, one hundred feet, be the same more or less, to the northern boundary of the wharf; thence westwardly, on the said line, thirty feet to the western boundary line of said lot No. 460; thence southwardly, on said line, to the Ohio river; thence eastwardly up the river, to the western line of Walnut street; thence northwardly, on said line, to the place of beginning; which conveyance is in fee simple, but conditioned to be void if the said John Mahard, jr., should pay, or cause to be paid, unto respondent the sum of seven hundred dollars per year, in quarterly payments, to be made on the first Monday of March, June, September, and December, yearly and every year, as long as the said John Mahard, sen'r, your respondent, should live, agreeably to a bond signed and sealed by the said John Mahard, jr., to respondent, of the same date; which mortgage was duly executed and acknowledged, and was recorded on the records of Hamilton county, on the 23d day of March, 1837. This mortgage and bond respondent has ready to produce at the hearing, or as the court shall direct. Respondent would further state, that the said John Mahard, jr., and William Mahard are his nephews; and respondent expecting to leave his property to his said nephews, he made an agreement with said John Mahard to deed him the above property, on condition that he would secure to respondent the payment of the annuity of seven hundred dollars per year, during his life, for which purpose the bond and mortgage aforesaid was given. Respondent further states, that John Mahard, jr., at request of respondent, deeded to William Mahard a lot, part of the last described property on the west, in consideration whereof the said William agreed to pay to respondent an annuity of one hundred dollars per year, in addition to the above; and the said John Mahard, jr., and William Mahard having entered into a co-partnership business, the said yearly sum of

eight hundred dollars was sometimes paid by the firm of J. & W. Mahard, sometimes in the name of John Mahard or his tenants, sometimes by W. Mahard. The quarter ending 7th June, 1842, was paid as follows:

1842, April 21.	By cash of Mr. Higbee - - -	$1	40
July 1.	By cash of do. after deducting his bill of lumber got of him by John Mahard, amounting to $30 25 - - - - - -	69	75
Oct. 1.	By cash per Mr. Higbee - - -	100	00
Dec. 23.	By do. do. - - -	20	00
	By 2 cords of wood per Mr. Higbee -	5	50
	By cash per Mr. Higbee - - -	2	32
		$200	00

There has also been paid, on account of the amount since due on account of said John Mahard, jr., mortgage by cash and due bill per Steelman and Higbee - - - - - $72 18

Leaving a balance due respondent by John Mahard, jr., the 6th June, 1842 - - - - - 102 82

Making the quarterly annuity of - - - - $175 00

This sum of one hundred and two $\frac{82}{100}$ dollars, together with the portions of said yearly annuity of seven hundred dollars since accruing quarterly, according to the conditions of said bond and mortgage, with the interest thereon, are now due, and owing to respondent, amounting, including interest on the payments up to 7th June, 1843, to eight hundred twenty-four $\frac{70}{100}$ dollars, which debt is honestly and justly due this respondent, and is the first lien on said property, and ought to be first paid; this respondent admits he filed a bill in the superior court of Cincinnati, as stated in said bill, which is now pending, which bill is founded on the following statement of facts: This respondent and said John Mahard, jr., previous to August, eighteen hundred and thirty-three, and until February, in the year eighteen hundred and thirty-seven, [have] been carrying on the business of pork packing and merchandizing, in the city of Cincinnati, and that while so engaged as partners the firm became liable to pay a promissory note, made by one John Rice, payable to Frederick Trow, and by said firm also signed on the back as surety for said Rice, dated the 19th day of August, 1833, for seven hundred dollars; respondent further states, that before said last described debt was paid respondent and said John Mahard, jr., on the 15th day of February, 1837, dissolved their co-partnership, and by agreement in writing the said John Mahard, jr., then and there engaged and agreed to pay all the debts due by said firm; your orator further shows, that said Trow, afterwards, not being able to obtain payment of said Rice, who died insolvent, instituted a suit against respondent and John Mahard, jr., in the court of common pleas of Hamilton county,

Ohio, and at the June term thereof, in the year eighteen hundred and forty-one, obtained a judgment against said John and respondent, for the sum of $1,001 20, including costs, and which judgment is, and has been, a lien on said estate since the rendering thereof; from this latter judgment an appeal was taken to the supreme court, where another judgment was had against respondent and said Mahard, jr., for ten hundred eighty-two $\frac{85}{100}$ dollars, including costs; respondent further states, that afterwards execution issued on said judgment against your orator and said John Mahard, jr., and although the said judgment was a valid lien on the property of said John Mahard, jr., mentioned in the bill, and ought by said Trow to have been levied on said real estate of said John Mahard; yet said Trow, by his attorney, directed the sheriff to make said money off your respondent's property; the attorney of respondent also endeavored, when he found respondent must pay the debt, to obtain an assignment of the judgment, which was also refused, and respondent, in order to prevent his property being sold by the sheriff, paid the said debt, together with $25 91 interest thereon, also $21 83, costs of the sheriff, amounting in all to $1,130 59, and which sum said John Mahard, jr., by the agreement aforesaid, was bound to pay, and as to which sum in equity this respondent was only considered as a surety, and will be treated as such; respondent, therefore, claims that he has in this court a right to be subrogated to all the rights and liens which the said Trow, the judgment creditor, had upon the estate of said John Mahard, jr., by virtue of said judgment; and respondent claims that, on the eleventh day of September, 1841, the said John Mahard, jr., sold and conveyed to Frederick Rodman certain real estate bound by said judgment, viz., all those four certain lots of ground situate, lying, and being on the north side of George street, in L'Hommedieu's subdivision, marked B, in the city of Cincinnati, between John street and Western row, beginning at a point on George street 164½ feet from the northwest corner of Western row and George street; thence running westwardly, on the line of George street, 105½ feet, to a point forty-five feet from the northeast corner of John and George street; thence running northwardly, at right angles with George street, ninety feet, to an alley nineteen feet wide; thence eastwardly, on the south line of said alley, 105½ feet, to a point 164½ feet from Western row; thence southwardly, at right angles with the line of said alley, ninety feet, to the place of beginning.

This sale was made after the judgment was obtained against respondent and John Mahard, jr., and was made for forty-nine shares of stock in the Lafayette Bank of Cincinnati, and twenty shares of stock in the Franklin Bank of Cincinnati, and by agreement of the parties, as respondent is informed and believes, the Franklin Bank stock was not transferred, but the title therein reserved or retained in said Rodman, until his property so purchased should be released from all incumbrances, and more particularly from the said Trow judgment. And this respondent prays that this answer may be taken and considered as a cross bill, and that on the final hearing of this cause the court will

decree him a lien on said property for the amount of his [illegible] said, and will also decree that the amount of said judgment, so paid by respondent as surety for said John Mahard, jr., stand as a lien against the stock of the Franklin Bank so held by the said Rodman, or against the funds which may be realized by the assignee from the other real estate of said Mahard bound by said judgment; and that such other and further relief may be decreed in favor of respondent as shall be agreeable to equity.

John Mahard, sr., defendant in the within cause, being sworn, says, that the facts set forth in the within answer, so far as stated from his own knowledge, are true, and so far as stated from the information of others, he believes them to be true.

JOHN MAHARD, Sr.

Sworn to and subscribed before me, this 21st day of July, 1843.

WM. MINER, *Clerk*.

Order of court.

And afterwards, to wit, on the second day of August, being at the July term last aforesaid of said court, came the parties by their counsel, and the bill and the answers of the Lafayette Bank of Cincinnati, and of John S. and Mark Buckingham being heard, the said parties moved the court thereon to dissolve the injunction, and the same being argued by counsel, and considered by the court, it is ordered that the said parties take nothing by their said motion; and that said injunction stand continued until the further order of the court; and on application of the complainant, leave is given to amend the bill within sixty days; and it appearing that the injunction heretofore granted does not extend to stay the proceedings in the superior court of Cincinnati in favor of James Dundas, Mordecai D. Lewis, Samuel W. Jones, Robert L. Pitfield, and Robert Howell, it is further ordered, that the said James Dundas, Mordecai D. Lewis, Samuel W. Jones, Robert L. Pitfield, and Robert Howell, their agents, attorneys, and solicitors, be enjoined from prosecuting said suits until the further order of this court.

And afterwards, to wit, on the third day of August, being at the July term last aforesaid of said court, came the complainant, by his solicitors, and filed in court here an amendment to said bill of complaint, in the words and figures following, to wit:

Amended bill.

N. C. McLean, assignee,
vs.
James Dundas et al.
} In chancery.

This day came the complainant, and, on leave, so amends the bill as to charge, in relation to the judgment recovered in the State court by the said Dundas and others, and levied upon the real estate of the said John Mahard, jr., that said judgments and levy are fraudulent as

against the bankrupt law, and to pray that the said Dundas and others and their attorneys and agents, be enjoined from suing out execution on said judgment until the further order of the court, and on final hearing that they be perpetually enjoined from issuing execution on said judgments.

Order of court.

And afterwards, to wit, on the third day of August, being at the July term last aforesaid of said court, on motion of John Mahard, sr., by his counsel, and it appearing to the satisfaction of the court that said Mahard has a mortgage executed by said John Mahard, jr., in the building and lot at the southwest corner of Walnut and Water street, in Cincinnati, including the wharf, to secure the payment of an annuity of seven hundred dollars per year, in semi-annual payments, and which mortgage, it is agreed is the oldest lien on said premises and bona fide, it is ordered by the court, that the complainant, as assignee, take possession of said mortgaged property, and rent the same from time to time, and out of the rent so received, to pay: first, the expenses and taxes; and next, to pay to said Mahard the said annuity now due, and so far as the same shall become due, to pay the same until the further order of the court; and it is further ordered, that said assignee keep the said property insured, and pay the premium out of the income he may receive; and it is understood, that the trustees of the late the said Franklin Bank of Cincinnati, waive and relinquish no rights they may have by virtue of the possession they acquired of said property; and thereupon this cause was continued.

And afterwards, to wit, on the fifth day of October, in the year of our Lord one thousand eight hundred and forty-three, came the said complainant, by his solicitors, and filed in the clerk's office of said court his amended bill in the words and figures following, to wit:

Amended bill.

Circuit court of the United States, seventh judicial circuit and district of Ohio.

Nathaniel C. McLean, assignee in bankruptcy of John Mahard, jr.,
vs.
The President, Directors, and Company of the Lafayette Bank of Cincinnati, and others.
} In chancery.

Your petitioner, by leave of the court had, now comes, and by way of amendment of his original bill, shows that he is informed, and believes, and charges, that said Mahard, before and at the time of filing his petition to be declared bankrupt, was the owner of forty-nine shares, of one hundred dollars each, of the capital stock of the La-

[illegible]ette Bank of Cincinnati, and twenty shares, of like amount each, of the stock of the Franklin Bank of Cincinnati; that the said Lafayette Bank and John S. Buckingham set up some claim to said forty-nine shares of stock, and John H. Groesbeck, and others, trustees of said Franklin Bank, and John Mahard, sr., set up some claim to said twenty shares of stock, of the particular nature of which your petitioner is ignorant.

And your petitioner charges, that neither said Lafayette Bank, John S. Buckingham, John H. Groesbeck, and others, trustees, &c., and John Mahard, sr., have any valid legal claim to said shares of stock, but that petitioner, as assignee, &c., is justly entitled thereto. Petitioner further shows, that on or about the 24th day of February, 1842, said Mahard sold and conveyed to Charles B. Dyer that part of in-lot 404, in Cincinnati, described in the mortgage of said Mahard to the President, Directors, and Company of the Franklin Bank of Cincinnati, set forth in the answer of John H. Groesbeck, and others, trustees of said bank, to petitioner's original bill, for the sum of $10,000, or thereabouts. That by the terms of said sale, Dyer agreed to assume and pay said bank, and has paid them, upwards of $7,000 of said Mahard's indebtedness to them, secured by said mortgage. That said Franklin Bank assented to said sale, and executed an agreement in writing, (the original or a copy of which is not within reach of petitioner, and he calls upon said Dyer to file the same or a copy thereof in court,) binding themselves to save Dyer harmless from all claims that might be set up to said part of said lot, and release their mortgage thereon.

That some time in the month of April, 1842, as petitioner believes and charges, said Mahard purchased from Dyer, in payment of the balance of said $10,000, a house and lot in the town of Lewistown, in the county of Hamilton, and State of Ohio, described as follows, viz., all that certain lot of land, with the improvements thereon, in Lewistown, Hamilton county, and State of Ohio, beginning at the Ohio river, at the lower corner of the lot; thence with Joseph Wright's upper line, north 80¾° west, to the south edge of the turnpike road; thence with the south side of said turnpike road, north 77° east, 375 feet, to a fifteen-feet alley, there laid out for the mutual use of the adjoining lots; thence south 8¾° east, five chains, more or less." That afterwards, but in the same month of April, as petitioner believes and charges, an arrangement was made between said Mahard and said John S. and Mark Buckingham, by which the title of said property above described was made by said Dyer directly to said Buckingham, in payment of $3,000, or thereabouts, of his indebtedness to them; all which transfers and payments, your petitioner charges, were in contemplation of bankruptcy, and made when said Mahard was insolvent and known to be so by said bank and said Buckinghams, and designed and intended to prefer said bank and said Buckinghams to the general creditors of said Mahard; and that petitioner, as assignee, is entitled to the property so transferred.

Petitioner further shows, that said Mahard, at the time of filing his

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petitioner the declared bankrupt, was the owner of certain real estate in the town of Covington, in the county of Kenton, and State of Kentucky, with a pork house, lard house, smoke house, slaughter house, and dwelling house thereon, a more particular description of which real estate petitioner has not the means of giving. That he is informed and believes, the President, Directors, and Company of the Northern Bank of Kentucky have a mortgage upon said property to secure certain indebtedness of said Mahard, or of the firm or firms of which he was a member, to said bank. That said bank is in possession of said property, enjoying the rents and profits thereof. Petitioner is ignorant of the terms of said mortgage, the amount of indebtedness claimed to be secured thereby, and of the date of the record thereof, and calls on said Northern Bank of Kentucky to set the same forth. And petitioner charges the same was given in contemplation of bankruptcy, when said Mahard was insolvent and known to be so by said bank, and designed and intended to prefer said bank over his general creditors. Petitioner further shows, that he is informed and believes, that the Ohio Life Insurance and Trust Company, and the President, Directors, and Company of the Commercial Bank of Cincinnati claim that the mortgage made by said Mahard to Andrew Johnson enures in some way to their benefit, and that said mortgaged premises shall be subjected to the payment of the indebtedness of said Mahard, or of the firm or firms of which he was a member, to said bank.

Petitioner further shows, that on the 21st day of February, 1842, said Mahard executed two other mortgages of that date, in which Mary K., his wife, united for the purpose of relinquishing dower of all his interest in in-lots No. 404 and No. 460 in Cincinnati, to one Mark Buckingham, to secure $1,304 $\frac{81}{100}$, recorded on said 21st day of February, 1842, in book 83, page 344, of the records of Hamilton county, and the other to John S. and Mark Buckingham, to secure the sum of $9,344 $\frac{37}{100}$, recorded on the same day in the same book, and page of said records; which said last mentioned mortgages petitioner charges were executed by said Mahard in contemplation of bankruptcy when he was insolvent, and known to be so by said Buckingham, and were designed and intended to give a preference to said Buckingham over his general creditors, and are fraudulent and void.

Petitioner further charges, that the said several mortgages to the President, Directors, and Company of the Franklin Bank of Cincinnati, the President, Directors, and Company of the Lafayette Bank of Cincinnati, the President, Directors, and Company of the Northern Bank of Kentucky, and the mortgage to Andrew Johnson, under and by virtue of which the Ohio Life Insurance and Trust Company, and the President, Directors, and Company of the Commercial Bank of Cincinnati, claim to hold a valid lien upon the real estate therein described, were severally made to secure various loans of money, or discounts of notes or bills made by said banks respectively, to said Mahard, or the firm or firms of which he was a member, or for his or their use and benefit, at and for a rate of interest greater than at the rate of six per cent. per

[illegible]m in advance. That said loans or discounts were [illegible] time to time by said banks respectively, before and after the execution of said several mortgages; and that at each and every renewal thereof, said several banks reserved a greater rate of interest than at the rate of six per cent. per annum in advance. That the said several contracts by which said Mahard, or the firm or firms of which he was a member, became indebted to said several banks, and to secure which, or renewals thereof, said several mortgages were made, were contracts which said banks had no legal power or capacity to make. By means whereof petitioner charges that each of said mortgages are absolutely void, and that he, as assignee, &c., is entitled to said mortgaged premises.

Petitioner further charges, that the indebtedness of said Mahard, or of the firm or firms of which he was a member, to the said several persons and corporations, to whom said several mortgages were made, accrued long anterior to the execution and record of any of said mortgages. That some time in the winter or spring of the year 1841, as petitioner is informed, said firms of J. & W. Mahard, and Mahard and Brother, became embarrassed, and unable to meet their engagements, and represented to their creditors generally, but more particularly to said several banks, that they were embarrassed, and could not meet their engagements, and asked of said several banks an extension on their paper held by them respectively, which was maturing. That an arrangement was made between said John Mahard, jr., on the part of said firms and said banks respectively, or some of them, by which the paper then maturing was retired, and other paper having a longer time to run, and falling due at different periods, substituted. That before the execution and record of any of said several mortgages, some of the paper so substituted had matured and been protested, or taken up by other paper in renewal thereof. That all said substituted paper was protested, or taken up by other paper in renewal thereof. To the end that the said defendants may, if they can, show why your petitioner should not have the relief prayed for, and may, said individuals upon their several and respective corporal oaths, and said banks under their respective corporate seals, according to the best of their several and respective knowledge, full, true, direct, and perfect answer, make to such of the interrogatories hereinafter numbered and set forth, as by the note herein underwritten, they are respectively required to answer, that is to say—

1st. Whether said John Mahard, jr., before and at the time of filing his petition to be declared bankrupt, was not the owner of forty-nine shares of one hundred dollars each of the capital stock of said Lafayette Bank of Cincinnati; and twenty shares of like amount of the stock of the Franklin Bank of Cincinnati? If yea, what became of the same?

2. State what claim, if any, you have to said forty-nine, and said twenty shares of stock; how evidenced; when and how did it arise, and upon what consideration.

3d. Whether the President, Directors, and Company of the Frank-

Cincinnati did not consent to the sale by John Mahard ... of Charles B. Dyer of that part of lot 404 in Cincinnati, described in the mortgage of said Mahard to said Bank, and agree to protect and indemnify said Dyer against other claims that might be set up to said property; if yea, when and how was such consent given?

4th. Whether said Buckinghams did not make an arrangement with said John Mahard, jr., by which the title of said property in the town of Fulton was made by said Dyer directly to said Buckinghams in payment of three thousand dollars, or any other sum of the indebtedness of said John Mahard, jr., or the firm or firms of which he was a member, to them; if nay, what arrangement did he make in reference thereto; if yea, state the time when said arrangement was completed, and set the same forth in detail.

5th. Whether said Franklin Bank and said Buckinghams, at the time said several payments and transfers were made, and the President, Directors, and Company of the Northern Bank of Kentucky, the President, Directors, and Company of the Lafayette Bank of Cincinnati, the Ohio Life Insurance and Trust Company, the President, Directors, and Company of the Commercial Bank of Cincinnati, and said John S. and Mark Buckingham, at the time of the execution of said mortgages by John Mahard, jr., respectively, did not know that said Mahards were in failing circumstances, and had failed to meet their engagements; were said Mahards then, or had they before that time, been under protest in said Franklin Bank, or said Northern Bank of Kentucky, or any other Bank; when did they first suffer their paper to be protested?

6th. Whether said Northern Bank of Kentucky have any mortgage or lien upon said property in Covington, Kentucky; upon what consideration was the same given; and whether said Northern Bank of Kentucky is not in the possession of said premises enjoying the rents and profits thereof?

7th. Whether said Mahards were not indebted to you in the spring of the year 1841; when did they become indebted to you; and is it not the same indebtedness claimed to be secured by said mortgages respectively?

8th. Whether said Mahards did not become embarrassed in the early part of the year 1841; if nay, when did they first become embarrassed; whether they, or the said John, did not, before the execution and record of the mortgage to you, or the execution and record of the mortgage under and by virtue of which you claim to be indemnified, represent that they were unable to meet their liabilities which were maturing, and ask for an extension? If yea, state when such application was made, and the terms of it; state fully all the particulars within your knowledge in reference thereto.

9th. Whether an extension was not given by you, and new paper substituted for that which was maturing? If yea, state when such substitution was made, the time the paper substituted had to run, and whether it or any of it, was protested at maturity, or whether it was

paid, and if paid, whether in extinguishment of the [illegible], or with the proceeds of other loans or notes or bills discounted in renewal thereof?

10th. Whether the said several mortgages made to you respectively by said John Mahard, jr., or under or by virtue of which you claim, were not made to secure a loan or loans of money, or discount or *discount* of notes, or bills by you respectively to said Mahard, or the firm or firms of which he was a member, or for his or their use; if yea, what was the amount of said loan or loans, bill or bills, note or notes, respectively; when payable; when discounted; what time to run to maturity; when discounted; what amount was paid to said Mahard, or to the firm or firms of which he was a member, or to his or their order, or placed to his or their credit, as the proceeds of said loan or loans, or discount or discounts, respectively; what amount retained by you as discounts received, premiums, or exchange?

11th. Whether said loan or loans were made, or said note or notes, bill or bills, discounted, in renewal of former loans, or notes or bills discounted? If yea, state clearly, distinctly, the date and origin of said indebtedness; how it arose; upon what kind of note or notes, bill or bills; the date or dates thereof; when payable; the amount of each note or bill; the time to run when discounted; what amount of each respectively was placed to the credit of Mahard, or the firm or firms of which he was a member, or paid to him or them, or to his or their order, as the nett proceeds of each; what amount of each retained by you.

12th. State the several loans made, or bills, or notes discounted by you respectively in renewal of said debts, from the origin of the same down to the note or notes, bill or bills, secured by said mortgages respectively; the date and amount of each of said loans, or bills or notes, discounted; the time each had to run when discounted; the amount of the nett proceeds of each; and the amount of each retained by you respectively.

13th. Whether notes or bills have been, since the execution of said mortgages respectively, discounted by you in renewal of the paper of said Mahard, or the firm or firms of which he was a member, secured by said mortgages respectively? If yea, state when discounted; the amounts of each, the time each had to run to maturity at the time discounted, the amount of proceeds of each paid to said Mahard, or the firm or firms of which he was a member, or placed to his or their credit; the amount retained by you respectively upon each of said notes or bills.

And your petitioner prays as in his original bill.

WRIGHT, COFFIN, & MINER,
And BROWN & McLEAN, *Solicitors.*

The President, Directors, and Company of the Lafayette Bank of Cincinnati will answer Nos. 1, 2, 5, 7, 8, 9, 10, 11, 12 and 13, of the foregoing interrogatories.

John H. Groesbeck and others, trustees of said Franklin Bank of

Cincinnati, will answer Nos. 1, 2, 3, 5, 7, 8, 9, 10, 11, 12, and 13, of said interrogatories.

The President, Directors, and Company of the Northern Bank of Kentucky will answer Nos. 5, 6, 7, 8, 9, 10, 11, 12, and 13, of said interrogatories.

The Ohio Life Insurance and Trust Company, and the President, Directors, and Company of the Commercial Bank of Cincinnati, will answer separately, Nos. 5, 7, 8, 9, 10, 11, 12, and 13, of said interrogatories.

John S. and Mark Buckingham will separately answer Nos. 1, 2, 4, 5, and 8 of said interrogatories.

John Mahard, senr., will answer Nos. 1 and 2, of said interrogatories.

And afterwards, to wit, at the December term of said court, in the year of our Lord one thousand eight hundred and forty-three, this cause was continued.

And afterwards, to wit, on the twenty-third day of March, in the year of our Lord eighteen hundred and forty-four, came the respondents, John S. and Mark Buckingham, by their solicitor, and filed in the clerk's office of said court their demurrer to the said amended bill of complaint, in the words and figures following, to wit:

Demurrer of Buckinghams.

U. S. circuit court, 7th judicial circuit.

NATHANIEL C. McLEAN, assignee of John Mahard, junior,
vs.
The FRANKLIN BANK of Cincinnati, the Lafayette Bank of Cincinnati, the Commercial Bank of Cincinnati, the Ohio Life Insurance and Trust Company, the Northern Bank of Kentucky, Andrew Johnson, Wm. Mahards, John S. Buckingham, and Mark Buckingham, partners under firm of J. S. & M. Buckingham.

In chancery. On the amended bill.

And the defendants, John S. and M. Buckingham, by their solicitor, W. M. Corry, come and demur to the amended bill filed in this case by the complainant, and say, that the same is not sufficient in equity for form and substance to entitle the said complainant to have and maintain his said action in this behalf and the relief therein sought, according to the laws of the land and the usages of courts of chancery, as he is ready to verify. Wherefore he prays a judgment, &c. And for special cause of demurrer, the said defendant assigns and sets forth the following, that is to say, that the said bill is informal and defective for multifariousness in joining distant rights.

that the said bill is informal and defective in the [illegible] parties defendants. Wherefore he prays judgment, &c., &c.

W. M. CORRY,
Sol. for J. S. B.

And afterwards, to wit, on the first day of July, being at the July term of said court, in the year of our Lord one thousand eight hundred and forty-four, on motion, the court grant leave to the complainant in this cause to amend his bill so as to make William McIntire a party defendant; and amendment made accordingly.

And afterwards, to wit, on the fifth day of July, at the July term last aforesaid of said court, came the defendant being, William McIntire, by Daniel Van Matre, eq., his solicitor, and filed in court here his answer to said bill of complaint in the words and figures following, to wit:

Answer of Wm. McIntire.

The answer of William McIntire, of the county of Hamilton, in the State of Ohio, late of the county of Warren, to the bill in chancery filed by Nathaniel C. McLean, assignee in bankruptcy of the effects of John Mahard, jr., against the President, Directors, and Company of the Lafayette Bank of Cincinnati, and this respondent and others, in the circuit court of the United States, for the seventh circuit and district of Ohio; this respondent saith, that on or about the twenty-second day of March, in the year eighteen hundred and thirty-two, this respondent conveyed to the said John Mahard, jr., by deed, the tract of land which is described in the mortgage, a copy of which is hereto attached, marked exhibit B, and made part hereof; and at the same time of delivering the deed for said land to the said John Mahard, jr., this respondent for the purpose of securing a balance of the purchase money of said land, took from the said John Mahard, jr., three promissory notes, described in said mortgage, and also the said mortgage from the said John Mahard, jr., and Mary K. Mahard, his wife, a copy of which is marked exhibit B.

The first of said three promissory notes has been paid, and copies of the said other two promissory notes are hereto attached, marked exhibit A, and made part hereof, with the endorsements thereon. The said two promissory notes, copies of which, with the endorsements, are marked exhibit A, are due and unpaid, and owing to this respondent, with interest, except the several payments of interest as endorsed thereon. The mortgage taken by this respondent was recorded on the twenty-second day of March, in the year eighteen hundred and thirty-two, in book No. 40, page 407, of the records of deeds and mortgages of the said county of Hamilton, in the State of Ohio; and this respondent believes the same to be the oldest and best lien on said tract of land; this respondent is informed that the deed aforesaid made by him to the said John Mahard, jr., is recorded in book No. 41, page 478, of said Hamilton county records; this respondent prays that his said claim may be allowed and paid as the first and best lien on said tract of land de-

scribed in said mortgage of this respondent, and that said land may be sold, and that this respondent may have such other and further relief as shall be according to equity. And he will ever pray, &c.

DANIEL VANMATRE,
Solicitor for respondent.

Exhibit A.—(Copy.)

$400. CINCINNATI, 22*d March*, 1832.

In two years from the first day of April next, I promise to pay to William McIntire, or his certain attorney, heirs, executors, administrators, or assigns, the sum of four hundred dollars, with interest from the first day of April next, agreeably to a mortgage bearing even date herewith, intending to secure the payment of the same sum; value received.

(Signed) JOHN MAHARD, Jr.

Witnesses present:
JAMES CLARK,
JOHN MAHARD, Sen'r.

Endorsed.

Received forty-eight dollars interest on the within, which is in full up to the 1st April, 1834.

WILLIAM McINTIRE.

Received twenty-four dollars interest on the within note up to the 1st day of April, 1835.

WILLIAM McINTIRE.

Received (Cincinnati, 30th May, 1836,) of John Mahard, jr., twenty-four dollars interest on the within note up to the first of April, 1836.

Interest paid on the within up to the first of April, 1837.
Interest paid on the within up to the first of April, 1838.
Interest paid on the within up to the first of April, 1839.
Interest paid on the within note to the first of April, 1840.

Copy.

$400. CINCINNATI, 22*d March*, 1832.

In three years from the first day of April next, I promise to pay to William McIntire, or his certain attorney, heirs, executors, administrators, or assigns, the sum of four hundred dollars, with interest from the first day of April next, agreeably to a mortgage bearing even date herewith, intended to secure the payment of the same sum; value received.

(Signed) JOHN MAHARD, Jr.

Witnesses present:
JAMES CLARK,
JOHN MAHARD, Sen'r.

without any fear or coercion of her husband, did, and now doth, acknowledge the signing and sealing thereof.

In testimony whereof I have hereunto set my hand and seal this twenty-second day of March, in the year of our Lord one thousand eight hundred and thirty-two.

(Signed) R. MULFORD, [SEAL.]
Justice of the Peace.

(Endorsed—John Mahard, jr., to William M'Intire, mortgage No.1. Received 22d March, 1832. Recorded book No. 40, page 407.
GRIFFIN YEATMAN,
Recorder, Hamilton county, Ohio.

UNITED STATES, *district of Ohio, ss:*

Personally came before me, Henry Morse, associate judge of the court of common pleas, in and for the county of Hamilton, in the State of Ohio, the above named respondent, William McIntire, who being by me duly sworn, saith, that the matters set forth in the foregoing answer, of which said exhibits A and B form a part, so far as stated to be of his own knowledge, are true; and so far as stated to be of his information or belief, he believes them to be true; and further saith not
WILLIAM McINTIRE.

Sworn to and subscribed before me, this 5th day of July, 1844.
HENRY MORSE,
Associate Judge.

And afterwards, to wit, on the eighth day of August, in the year of our Lord eighteen hundred and forty-four, being at the July term last aforesaid of said court:

Decree.

This cause came on for further hearing this day, and thereon the court overruled the demurrer of John S. Buckingham and Mark Buckingham filed in this cause; and the court, after duly considering the pleadings and proofs in this cause, find that it is equitable and just that the following described premises remaining in the said John Mahard, jr., at the time of his application for the benefit of the Bankrupt law, should be sold, discharged of all claim and title of the defendants; and thereon the court do order, adjudge, and decree, that said complainant, assignee as aforesaid, and as special master, now here appointed by the court, sell the said pemises, to wit:

1st. All that part of in-lot No. 460 on the original plan of Cincinnati, on the southwest corner of Water and Walnut streets, fronting on the south side of Water street seventy feet, and extending back southerly, one hundred feet, to the wharf; bounded east by Walnut street, south by the wharf or river landing, west by Charles B. Dyer's lot, formerly Robert Stewart's, and north by Water street, excepting about

three feet on Water street by about one hundred feet deep, formerly conveyed by said John Mahard, jr., to Wm. Mahard.

2d. Also all that wharf or landing and lot of land in Cincinnati, on the Ohio river, adjoining south of the foregoing, the south part of lot No. 460, bounded east by Walnut street, south by the Ohio river, about one hundred feet west of lot No. 459, and bounded north one hundred feet by the foregoing lot and by said Dyer's lot.

3d. And also that tract of land in section 22, township 4, and fractional range 2, in the Miami purchase in Hamilton county, Ohio, to be laid off the north side of the southeast quarter of said section, by a line running parallel with the north boundary of said quarter section from east to west, at such a distance south from the said north boundary as to include one hundred and twenty (120) acres, except ten (10) acres sold to S. W. Phelps, off the east end of said tract, which parcel of land was deeded to the said John Mahard, junior, by deed recorded in book No. 58, page 437, of the records of Hamilton county, Ohio.

4th. All that other tract in the same section, township, and fractional range, being the southwest quarter of said section, except the forfeit in the northeast corner, and also the lot of nine acres and seventy-three square roods, conveyed by William McIntire to A. Martin, by deed recorded in said records, containing, after said reservation, one hundred and twenty-three acres, three roods, and twenty and one-half perches, conveyed to said John Mahard, junior, by said McIntire, by deed recorded in book No. 41, page 478, of said records.

5th. Also all that tract of one acre, one rood, and four perches, adjoining the last described tract, conveyed to said John Mahard, junior, by said Martin, by deed recorded in book No. 50, page 456, of said records.

6th. Also all that other tract in the same township and fractional range, known as the forfeiture of quarter section eighteen, in the plat of quarter sections lying in a regular square in the northeast corner of said quarter section, and containing twenty-six and two-thirds acres, conveyed to the said John Mahard, jun., by Spicer Ferguson, by deed recorded in book No. 49, page 404, of said records.

7th. And also that other tract, known as the forfeiture of the northwest quarter of section No. 21, in the same township and fractional range, being a tract of twenty-six and two-thirds acres in the northeast corner of said quarter section, laid off in a regular square, conveyed to the said John Mahard, jun., by B. Jones, by deed recorded in book No. 58, page 543, of said records. And in making said sale, that the said assignee and special master be governed in all respects by the law of the State of Ohio, regulating sales of real estate in Ohio, on judgments and executions at law; and in making the appraisement and sale the said assignee and master may have the said land subdivided and appraised, and sold in parcels, if in his opinion, and that of the appraisers, the land so subdivided would sell for a better price than if sold in a body; and he shall also appraise that portion of said land mortgaged to said McIntire in a separate body, and may sell the same separately, if, in the opinion

of the purchasers, it will be advantageous so to sell it. That said assignee and special master report his proceedings in the premises to the next term of this court, and bring the proceeds of such sale into court to be distributed as the court, by its further order, may direct. That the purchaser or purchasers at such sale take such premises discharged of and from all claim whatsoever of the defendants in this suit, and all other questions and controversies between the parties to this suit, not herein or heretofore decided and hereby reserved; and for the coming in of said report, and further hearing and decree, this cause is continued.

And afterwards, to wit, on the 21st day of August, in the year of our Lord eighteen hundred and forty-four, the following order of sale was issued from the clerk's office of said court, to wit:

Order of sale.

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

At a circuit court of the United States, within and for the seventh circuit and district of Ohio, began and held at the court-house, in the city of Cincinnati, on the first Monday in the month of July, being the first day of the same month, in the year of our Lord one thousand eight hundred and forty-four, before the honorable John McLean and Humphrey H. Leavitt, judges of said court; among the proceedings had were the following, to wit:

NATHANIEL C. McLEAN, assignee in bankruptcy of John Mahard, jun'r, a bankrupt,
vs.
THE PRESIDENT, Directors, and Company of the Lafayette Bank of Cincinnati, James Dundas, Mordecai D. Lewis, Samuel W. Jones, Robert L. Pitfield, and Robert Howell and others.

In chancery.

This cause came on for further hearing this day, and thereon the court overruled the demurrer of John S. Buckingham and Mark Buckingham, filed in this cause; and the court after duly considering the pleadings and proofs in this cause, find that it is equitable and just that the following described premises remaining in the said John Mahard, jun., at the time of his application for the benefit of the Bankrupt law, should be sold, discharged of all claim and title of the defendants; and thereon the court do order, adjudge, and decree, that said complainant as assignee as aforesaid, and as special master now here appointed by the court, sell the said premises, to wit:

1st. All that part of in-lot No. 460, on the original plan of Cincinnati, on the southwest corner of Water and Walnut streets, fronting on the southside of Water street seventy feet, and extending back, southerly, one hundred feet to the wharf, bounded east by Walnut street,

south by the wharf or river landing, west by Charles B. Dyer's lot, formerly Robert Stewart's, and north by Water street, excepting about twenty-three feet on Water street by about one hundred deep, formerly conveyed by said John Mahard, jun., to Wm. Mahard.

2d. Also all that wharf or landing and lot of land in Cincinnati, on the Ohio river, adjoining south of the foregoing, the south part of lot No. 460, bounded east by Walnut street, south by the Ohio river, about one hundred feet west by lot No. 459, and bounded north one hundred feet by the foregoing lot, and by said Dyer's lot.

3d. And also all that tract of land in section 22, township 4, and fractional range 2, in the Miami purchase, in Hamilton county, Ohio, to be laid off the north side of the southeast quarter of said section, by a line running parallel with the north boundary of said quarter section, from east to west, at such a distance south from the said north boundary as to include one hundred and twenty (120) acres, except ten (10) acres sold to S. W. Phelps off the east end of said tract; which parcel of land was deeded to the said John Mahard, jun'r, by deed recorded in book 58, page 437, of the records of Hamilton county, Ohio.

4th. Also all that other tract in the same section, township, and fractional range, being the southwest quarter of said section, except the forfeit in the northeast corner; and also a lot of nine acres and seventy-three square roods, conveyed by Wm. McIntire to A. Martin, by deed recorded in said records, containing, after said reservation, one hundred and twenty-three acres, three roods, and twenty-one and one half perches, conveyed to said John Mahard, jun., by said McIntire, by deed recorded in book No. 141, page 478 of said records.

5th. Also all that tract of one acre, one rood, and four perches, adjoining the last described tract, conveyed to said John Mahard, jun'r, by said Martin, by deed recorded in book No. 50, page 456 of said records.

6th. Also all that other tract in the same township and fractional range, known as the forfeiture of quarter section eighteen, in the plat of quarter sections lying in a regular square in the northeast corner of said quarter section, and containing twenty-six and two-thirds acres, conveyed to the said John Mahard, jun'r, by Spicer Ferguson, by deed recorded in book No. 49, page 404 of said records.

7th. And also that other tract known as the forfeiture of the northwest quarter of section No. 21, in the same township and fractional range, being a tract of twenty-six and two thirds acres, in the northeast corner of said quarter section, laid off in a regular square, conveyed to the said John Mahard, jr., by B. Jones, by deed recorded in book No. 58, page 543, of said records; and in making said sale, that the said assignee and special master be governed in all respects by the law of the State of Ohio, regulating sales of real estate in Ohio on judgments and executions at law; and in making the appraisement and sale the said assignee and master may have the said land subdivided and appraised and sold in parcels, if in his opinion, and that of the appraisers, the land so divided would sell for a better price than if sold in a

body; and he shall also appraise that portion of said land mortgaged by said McIntire in a separate body, and may sell the same separately if in the opinion of the appraisers it will be advantageous so to sell it. That said assignee and special master report his proceedings in the premises to the next term of this court, and bring the proceeds of such sale into court to be distributed as the court by its further order may direct. That the purchaser or purchasers at such sale take said premises discharged of and from all claim whatsoever of the defendants in this suit. And all other questions and controversies between the parties to this suit not herein or heretofore decided, are hereby reserved. And for the coming in of said report, and for further hearing and decree, this cause is continued. (August 8th, 1844.)

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

J. William Miner, clerk of the circuit court of the United States, within and for the seventh circuit and district of Ohio, do hereby certify, that the foregoing decree is correctly copied from the records of the proceedings of said court.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, this 21st day of August, A. D. 1844.

[SEAL.]

Attest: WM. MINER, *Clerk*.

And afterwards, to wit, on the twenty-first day of December, being at the December term of said court, in the year of our Lord one thousand eight hundred and forty-four, came the said assignee and special master, and returned into court here the said order of sale, accompanied with an appraisement and a report of his proceedings in the premises. Which said appraisement and report are respectively in the words and figures following, to wit:

Appraisement.

An inquisition taken in the county of Hamilton, and State of Ohio, on the day of October, eighteen hundred and forty-four, before me, N. C. McLean, assignee and special master. Whereas, by virtue of a certain order made by the circuit court of the United States, for the district of Ohio, at the July term of said court, A. D. 1844, in the case of N. C. McLean, assignee of John Mahard, jr., in chancery, against the Lafayette bank and others, by which it was ordered that the said N. C. McLean, as assignee and special master, should proceed to the sale and appraisement of the real estate and land described in said order, (a copy of which is annexed and made part of this return,) agreeably to the provisions of the statute of the State of Ohio, regulating the sale of real estate in Ohio on judgments and executions at law.

Whereupon I, Nathaniel C. McLean, the said special master and assignee, having summoned an inquest of three respectable disinterested

freeholders, resident in said county, to wit, George P. Torrence, William Stephenson, and Edward Dodson, who, being duly sworn and charged, say, on their oaths, that the premises first described in said order, being a part of in lot No. 460, in the city of Cincinnati, with the improvements thereon, are of the value of seventeen thousand dollars; and that the premises second described in said order, being a wharf or landing, and lot of land adjoining, south of the foregoing as described in said order, are of the value of twelve thousand dollars; and that the premises described third in said order, being one hundred and ten acres in the north part of the southeast quarter of section 22, township 4, and fractional range 2, in the Miami purchase in said county of Hamilton, as described in said order, are of the value of five thousand five hundred dollars; and that the premises described fourth, fifth, and seventh in said order, containing one hundred and fifty and two-thirds acres, four roods, and twenty-five and one-half perches, with the improvements thereon, are of the value of fourteen thousand dollars; and that the premises described sixth in said order, as being in the northeast corner of quarter section 18, in same township and fractional range, (but which they believe to be in the northeast corner of quarter section 27, of same township,) are of the value of thirteen hundred dollars; and that in their opinion the land and premises mentioned in said order would sell for a better price to be sold in parcels and tracts as they have appraised it as above, than to be sold together or in smaller parcels. And in pursuance of said order, they have appraised the tract mortgaged to said McIntire, to wit, the premises described fourth in said order, (with improvements,) at the sum of twelve thousand six hundred and seventeen dollars; but believe that the several tracts would sell better in parcels as recommended above.

In testimony whereof, as well I, the said special master and assignee, as the inquest aforesaid, have to this appraisement set our hands and seals on the day and year first above written.

N. C. McLEAN,
Assee. and Master. [SEAL.]
GEO. P. TORRENCE, [SEAL.]
W. STEPHENSON, [SEAL.]
EDWARD DODSON. [SEAL.]

DISTRICT OF OHIO,
Hamilton county, ss.

I do hereby certify that the above named appraisers were freeholders and residents of said county, and that they were duly summoned and sworn by me according to law, on the day and year above written.

N. C. McLEAN,
Assignee and special master.

Circuit court of United States, for the district of Ohio, December term, 1844.

N. C. McLean, assignee of John Mahard, jr., vs. Lafayette Bank et als. } In chancery.

Report of assignee and special master.

The undersigned, assignee of John Mahard, junior, and appointed special master for the sale of certain real estate, under order and decree of said circuit court, at the July term, 1844, would respectfully represent to said court, that agreeably to said order and decree, he proceeded to the appraisement and sale of said real estate described in said order and decree, agreeably to the laws for the sale of real estate on judgments at law, in the State of Ohio, by causing the same to be appraised by three disinterested freeholders, residents of the county of Hamilton, (where said land lies,) which inquest or appraisement is filed in the office of the clerk of said court,) and by advertising the place and time of sale thirty days in the Cincinnati Gazette, a paper of general circulation in said county of Hamilton, and offering the same at the door of the court-house at public sale, at the time and place specified in said advertisement in the lots and parcels as recommended in said inquest of appraisement, (to which reference is made,) and that the same or any part thereof was not sold for want of bidders to the amount of two thirds of said appraisement, and that the expense of making said appraisement, and attempting said sale as aforesaid, amounts to the sum of seventy-six dollars, (as per account below,) which he prays may be allowed from any moneys which he may receive in said case, or from the proceeds of some future sale.

Paid appraisers for their services - - - - - -	$9 00
For carriage for appraisers to go to farm, and for carriage for assignee - - - - - - - - - -	5 50
For advertising sale thirty days - - - - - -	30 00
Preparing advertisement - - - - - - - -	1 50
For services as crier at sale - - - - - - -	10 00
For making report, and taking same to Columbus - -	20 00
Whole expense - - - - - -	$76 00

And afterwards, to wit, on the twenty-first day of December, in the year and at the term last aforesaid of said court, the court entered the following order herein, to wit:

Order of court.

On motion of counsel for complainant, and upon producing a report of the assignee and special master in this case, it is ordered that all the matters and things in said report set forth be confirmed, and further,

that the prayer of said assignee and special m[illegible] in regard to the costs of said appraisement, be and the same is hereby granted.

And afterwards, to wit, on the twenty-first day of December, in the year and at the term last aforesaid of said court, came the said complainant and filed in court here the following affidavit, to wit:

Affidavit.

NATHANIEL C. McLEAN, assignee of J. Mahard, jr.,
vs.
THE LAFAYETTE BANK and others.

The assignee aforesaid states, that at the time he was appointed the assignee of John Mahard, jr., he the said Mahard was the owner and in possession of a certain farm heretofore described in the former proceedings in this cause, and the said assignee has been informed and believes that as soon as the said Mahard left the farm aforesaid, and in fact before all of his, the said Mahard's, hands had left said premises, J. Buckingham and Mark Buckingham immediately took possession of said farm without any authority from the said assignee, or from the Lafayette Bank, as the said assignee has been informed by Mr. Ball, one of the attorneys of said bank, that the Buckinghams did not hold the possession of said farm for or through said bank; that a large amount of rent in kind has been received from said farm, and is now upon the premises, having been placed there by those persons to whom parts of said farm were rented by the said Buckinghams, and who paid said rent in parts of the produce. The said Buckinghams are judgment creditors, and their claim is now before the court for adjustment in this case. The assignee has also been informed that the said farm has been sold for taxes at the State sale of forfeited lands.

N. C. McLEAN, *Assignee.*

Sworn to and subscribed in open court, December 21, 1844.

WM. MINER, *Clerk.*

And thereupon the complainant, for reasons filed, moved the court to appoint a receiver in this case, which said reasons are in the words and figures following, to wit:

Circuit court of United States.

NATH'L C. McLEAN, assignee, &c.
vs.
The President, Directors, and Company of the Lafayette Bank of Cincinnati and others.
In chancery.

The complainant comes and shows to the court that there is now a large amount of personal property of great value, being the rents and profits of certain real estate, described in the complainant's bill, owned and held by said Mahard, at the time of his application in bankruptcy; which rents and profits consist of the products of said real estate in kind, and the same is now in the barns and other buildings on said real

[illegible] and the [illegible] rents and profits of said real estate is of great value, and here now moves the court for the appointment of a receiver, with power to take possession of said personal property and sell the same; and also to rent the said real estate, and to do and perform such other acts as shall be necessary to protect the property, until the final distribution of the same by the order of this court.

BROWN & McLEAN, and
WRIGHT, COFFIN, & MINER,
For complainants.

And afterwards, to wit, on the twenty-sixth day of December, in the year and at the term last aforesaid of said court, came the defendants, the President, Directors, and Company of the Commercial Bank of Cincinnati, by R. King, esq., their solicitor, and filed in court here their answer to the amended bill of complaint herein, in the words and figures following, to wit:

Answer of Com'l Bank of Cincinnati.—In chancery.

The several answer of the President, Directors, and Company of the Commercial Bank of Cincinnati, defendants, to the amended bill of Nathaniel C. McLean, assignee in bankruptcy of John Mahard, jr. These defendants now come, and saving all benefit and advantage whatsoever of exception to the said amended bill, for answer to the same, or to so much thereof as they are advised, they are required to answer unto, in answer to the fifth interrogatory in said amended bill, being the first interrogatory which they are thereby required to answer unto, say, that at the time of the execution of the mortgage in said amended bill mentioned, made by John Mahard, jr., to Andrew Johnson, (and which mortgage these respondents, as the then holders and owners of the bill of exchange for $3,500, endorsed by J. & W. Mahard, therein specified and secured, claim and insist was taken and held by said Johnson, in trust for these respondents, and enured to their use and benefit,) they, the said respondents, did not know, nor did they then believe that the said John Mahard, jr., and William Mahard, or either of them, were in failing circumstances, or that the said Mahards, or either of them, had failed to meet their engagements; but, on the contrary, believe and say, that the said Mahards had, at that time, and for a long time afterwards, entire confidence in their own solvency; and that these defendants, confiding in the credit and solvency of said John Mahard, jr., did afterwards, to wit, about the 24th day of March, 1842, discount, upon the credit of the said Mahard, other paper by him endorsed, to wit, a note of that date for $100, or thereabouts, made by William Schillinger, payable 90 days after the date thereof. Further answering the said interrogatory these respondents say, that they have been informed and believe, that the said bill of exchange for $3,500, was on the 17th day of December, A. D. 1841, being then in the hands of the Union Bank of Louisiana, presented to the drawees named

...at New Orleans, in the State of Louisi... ...eptance... ...then and there protested for non-acceptance, but that the said bill was not finally presented for payment, or finally protested until a period long afterwards, to wit, the 1st day of April, A. D. 1842, and was not returned to these respondents until about the 15th day of April, A. D. 1842, and was the first paper the said Mahards, to the knowledge of these respondents, suffered by them to be protested.

Further answering these respondents, in answer to the seventh, being the next interrogatory in said amended bill required to be answered by them, say, that the said Mahards were not indebted to these respondents in the spring of the year 1841, but that they first became indebted to these respondents at the time and in the manner and form already answered, which is the same indebtedness claimed by these respondents to be secured to them by the said mortgage, made and delivered by John Mahard, junior, to Andrew Johnson.

Further answering these respondents, in answer to the eighth, being the next interrogatory in said amended bill required thereby to be answered by these respondents, say, that as they do not know, they can not say when the said Mahards first became embarrassed, but deny that the said Mahards, or either of them, at any time, before or after the execution or record of the said mortgage under which these respondents claim, represented to these respondents that they were unable to meet their liabilities, which were maturing, or asked from these respondents an extension of their paper.

Further answering these respondents, in answer to the ninth, being the next interrogatory in said amended bill required thereby to be answered unto by these respondents, say, that no renewal or extension of the said bill of exchange was given by these respondents to the said Mahard, or to any of the parties thereto; but that the original bill of exchange, as aforesaid, a copy of which, marked exhibit A, and of the endorsements thereon, is filed herewith and made part of this answer, is still in the hands of these respondents, and owned by them.

Further answering these respondents, in answer to the tenth, being the next interrogatory in the said amended bill required thereby to be answered unto by these respondents, say, that the said mortgage, under and by virtue of which these respondents claim, was made to secure the loan and discount of the said bill of exchange; that the said bill was drawn by John McLaughlin upon Mahard and Brother, at New Orleans, in the State of Louisiana, payable to the order of and endorsed by J. & W. Mahard to Andrew Johnson, and by Andrew Johnson to these respondents; that it was drawn and dated Cincinnati, 29th of November, 1841, and was payable four months after the date thereof; that the said bill of exchange was discounted by these respondents on the day of the date thereof; that the sum of $3,430, the proceeds thereof, was, on the same day, placed by these respondents to the credit of the said John McLaughlin, the drawer, on their books; these respondents taking the obligation thereupon of the said J. & W. Mahard as good, and not knowing or believing them to be in an insolvent or embarrassed condition, that the sum of seventy dollars, and no more, was retained

and charged by these respondents as discount received, premium, or exchange on said bill; but that these respondents are informed and believe, and so expressly state the fact to be, that by an arrangement between the said parties the proceeds aforesaid of the said bill of exchange were afterwards transferred by the said McLaughlin to the said J. & W. Mahard, and was by them had and received and used. These respondents expressly deny that the discount of seventy dollars, so retained and charged by them, was at a rate of interest greater than six per centum per annum in advance, or that they took, received, or contracted upon said bill for any greater interest than at the rate of six per centum per annum, or that they made or had any contract or contracts in the premises which they might not well and lawfully make or have; or that the said bill of exchange, mortgage, or any other act or contract of these respondents in the premises, are illegal or void in any way whatsoever, as in said amended bill pretended.

Further answering these respondents, in answer to the eleventh, twelfth, and thirteenth, being the next and last interrogatories in said amended bill required by them to be answered unto, say, as they have already above answered and said, that the loan or bill of exchange aforesaid was not in renewal or extension of any other or former loan or bill of exchange, and that no renewals or extensions whatsoever of the said original loan or bill of exchange have been made by these respondents; but, on the contrary, that the bill of exchange aforesaid now held and owned by these respondents is the original contract upon which the said Mahards became and are indebted to these respondents, and saving the mortgage given to secure the same, is the only obligation for said indebtedness ever held by these respondents; these respondents having fully answered; without this, that any thing charged in said amended bill, or required thereby to be answered unto by them, and not herein and hereby fully, truly, directly, and perfectly answered, is true or correct to the belief or knowledge of these respondents, otherwise than as informed by the said amended bill, claim and insist, that by virtue of the said mortgage executed and delivered by the said John Mahard, jr., to the said Andrew Johnson, and by him recorded, conditioned, and intended, for the securing and indemnifying the said Johnson as surety for the said Mahard, against his liability to these respondents upon the said bill of exchange for $3,500, therein specified, a copy of which mortgage, marked exhibit B, is filed with this answer, and made part hereof; they, as the holders and owners of the said bill of exchange, are entitled to have the same, together with interest, damages, and costs thereupon, fully paid and satisfied out of the proceeds of sale of the premises conveyed and pledged in said mortgage; because these respondents say, that the said before described [bill] was, on the 17th day of December, A. D. 1841, presented by *by* these respondents at the counting-house of the drawees, Mahard & Brother, at the city of New Orleans, in the State of Louisiana, and out of the jurisdiction of the State of Ohio, for acceptance by them according to the tenor and effect thereof; and acceptance thereof was then and there demand-

ed by those respondents of the said Mahard & Brother, and was then and there refused; and the said bill of exchange then and there protested in due form of law for non-acceptance, and notice of said non-acceptance then and there given in due form by these respondents to the drawers and endorsers of said bill; and because also, afterwards, at the maturity of said bill the same was presented as aforesaid for payment, and payment thereof demanded by these respondents of said Mahard and Brother, according to the tenor and effect of said bill, and payment thereof was then and there refused; whereupon the said bill was then and there protested in due form of law for non-payment thereof, and notice thereof was then and there given in due form of law to the drawers and endorsers of said bill by these respondents, whereby the said John and William Mahard, constituting the firm of J. & W. Mahard, Andrew Johnson, and John McLaughlin, became liable to these respondents for the amount of the said bill of exchange, together with all legal interest, damages, and costs; and these respondents became and are entitled to have the same paid as aforesaid out of the proceeds of sale of the estate of the said John Mahard, jr., conveyed by him to the said Andrew Johnson by the mortgage aforesaid.

These respondents furthermore charge, that the two other notes or bills mentioned in said mortgage have long since been paid to the holders thereof, and that the bill therein mentioned for $3,400 was not endorsed by said Johnson, and that respondents have thereby become and are entitled to the sole benefit of said mortgage for the satisfaction of their said claim. These respondents furthermore charge, that by some pretended release or cancelling of the said mortgage, procured by the fraudulent misrepresentations of John S. Buckingham and Mark Buckingham, co-defendants with these respondents, to be made or attempted to be made by the said Andrew Johnson, wholly, without the knowledge or consent of these respondents, the said John S. and Mark Buckingham seek to set aside as null and of no price the said mortgage, seeking thereby to gain a priority over these respondents, they, the said John S. and Mark Buckingham, as well as the said Andrew Johnson, in the so procuring and making the said pretended release, or cancelling of the said mortgage, under which these respondents claim, well knowing that these respondents were the holders and owners of the said bill of exchange for $3,500, secured and provided for by said mortgage, and that the same was due and wholly unpaid, and that the said mortgage [was] wholly unsatisfied at the time of the said pretended release or cancelling; and well knowing also that the said Andrew Johnson held the said mortgage in trust for these respondents as holders of the said bill, and that he, the said Andrew Johnson, had no right, power, or authority whatsoever, to release, cancel, or enter satisfaction of the said mortgage as to these respondents, and that the said pretended release or cancelling was null and of no binding effect as to the interest of these respondents therein. These respondents furthermore charge, that the said Buckinghams have taken from the said Johnson, and now hold, the original deed of mortgage

aforesaid, and refuse to deliver up the same to these respondents, pretending that the said mortgage is satisfied and cancelled, whereby these respondents are prevented from producing said original deed. In tender consideration whereof, these respondents pray that this answer may be taken in the nature of a cross bill, and that the said complainant, and the said John S. Buckingham, Mark Buckingham, Andrew Johnson, and all other parties to this suit, may be made defendants hereto; that the said Buckinghams be compelled to produce and give up to these respondents the said original mortgage under and by virtue of which these respondents claim that they may have a decree for the full payment and satisfaction of the said bill of exchange, together with damages, interest, and costs, out of the proceeds of the sale of the premises conveyed thereby; that as between themselves and other parties hereto claiming liens upon said premises, the said liens may be regularly marshalled, and for such other and further relief as equity and good conscience may seem to require. And these respondents, as in duty bound, will ever pray, &c.

JAMES HALL, *Agent*.
RUFUS KING, *Sol*.

THE STATE OF OHIO,
City of Cincinnati, ss.

Before me, Henry E. Spencer, mayor of the city aforesaid, personally came James Hall, and being first duly sworn, subscribed the foregoing answer, and makes affidavit that he is the agent of the trustees of the Commercial Bank of Cincinnati, for the management of the affairs of said corporation, and that the matters and things above alleged and stated by way of answer are true. In testimony whereof I have hereunto subscribed my name and affixed my seal of office, this 23d day of December, A. D. 1844.

H. E. SPENCER, *Mayor*. [L. S.]

Exhibits referred to.

Exhibit A.

CINCINNATI, *November 29th*, 1841.

Exchange for $3,500. Four months after this first of exchange (second of the same tenor and date unpaid) pay to the order of J. & W. Mahard, three thousand five hundred dollars, value received, and charge the same to account of, your obedient servant,

JOHN McLAUGHLIN.

To MAHARD & BROTHER,
New Orleans.

(Endorsed.) J. & W. MAHARD, ANDREW JOHNSON.

[Endorsed across the face in red.] New Orleans, 17th December, 1841, protested for non-acceptance, costs $4.

A. MAZUREAU,
Notary public.

Exhibit B.

Know all men, that I, John Mahard, jr., of the county of Hamilton, and State of Ohio, in consideration of the sum of $10,353, to me paid by Andrew Johnson, of the same place, the receipt whereof is hereby acknowledged, do hereby bargain, sell, and convey, to the said Andrew Johnson, his heirs and assigns forever, the following real estate, viz: All the said John Mahard's, jr., interest and estate in in-lot numbered 460, on the original recorded plat of the city of Cincinnati, in the county and State aforesaid, it being the same property that was conveyed to said John Mahard, jr., by John Mahard, by two deeds, one dated 3d day of October, A. D. 1828, and recorded in book No. 29, page 251 of Hamilton county records; and the other the 15th day of February, A. D. 1837, and recorded in book 62, page 236, saving and excepting about twenty-three feet on Water street, by about one hundred feet deep, which the said John Mahard, jr., has previously conveyed by deed, dated the 3d day of March, A. D. 1837, and recorded in book No. 68, page 504 of said Hamilton county records, to William Mahard, together with all the privileges and appurtenances to the same belonging.

To have and to hold the same to the said Andrew Johnson, his heirs and assigns, forever; hereby covenanting that the title so conveyed is clear, free, and unincumbered, and that he will warrant and defend the same against all claims whatsoever: Provided, always, that if the said John Mahard, jr., his heirs, executors, administrators, or assigns, shall cause to be paid unto the said Andrew Johnson, or rather protect and save harmless the said Andrew Johnson from his liability as endorser of a certain draft for $3,500, drawn by John McLaughlin, the 29th November, 1841, on Mahard & Brother, and payable four months after date to the order of J. & W. Mahard, and endorsed by them and said Andrew Johnson; and also from his liability as endorser of a certain other draft for $3,420, drawn by J. McLaughlin, the 15th Dec., 1841, on Mahard & Brother, and payable 60 days after date to the order of J. & W. Mahard, and endorsed by them and said Andrew Johnson; and also from his liability as endorser of a certain promissory note, drawn 24th January, 1842, by J. & W. Mahard, and payable 90 days after date to the order of said A. Johnson, and endorsed by him and J. L. Enyart, and sold to Geo. Milne & Co.; these presents being to secure said Johnson in his endorsements as aforesaid of said two bills of exchange and the promissory note, then these presents shall be void.

In witness whereof the said John Mahard, jr., has hereunto set his hand and seal, this 16th day February, in the year 1842.

JNO. MAHARD, JR. [SEAL.]

Signed, sealed, and delivered in presence of—
A. DELZELL, EBN'R HARRISON.

STATE OF OHIO, *Hamilton county*, ss.

Be it remembered, that on this 16th day of February, in the year of

our Lord 18[illegible], before me, the subscriber, a justice of the peace in and for said county, personally came John Mahard, jr., the grantor in the above conveyance, and acknowledged the same to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my seal, on the day and year last aforesaid.

EBENEZER HARRISON, *J. P.* [SEAL.]

(Endorsed.) Received and recorded 16th February, 1842, in book No. 83, page 325, records Hamilton county, Ohio,

GRIFFIN YEATMAN,
Recorder, Hamilton county, Ohio.

Order of court.

We agree that the affidavit above of James Hall, agent of the trustees of the Commercial Bank of Cincinnati, shall suffice and be received instead of that of the trustees of said corporation.

WRIGHT,
COFFIN, &
MINOR,
For complainant.

And afterwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and forty-five, being at the December term, last aforesaid, of said court," came the parties by their counsel; and, on motion of the complainant, and upon the filing of his affidavit that J. Buckingham, one of the defendants in this suit, has taken possession of the farm lately occupied by the said Mahard, fully described in the bill, situated near the city of Cincinnati, in the county of Hamilton, Ohio, and holds the same against the assignee of the bankrupt, receiving and retaining the rents and issues thereof to his own use. This court having heard the arguments of counsel, and fully deliberated thereon, do order that John Burgoyne be, and he is hereby, appointed receiver of this court, and is authorized and empowered as such to take possession of the said farm by whatever name known, and of the rents and issues thereof there remaining, in specie, or to accrue hereafter; and so to manage or lease the said farm as to obtain the best rent for it until the sale thereof, or the further order of this court; taking, keeping, and reporting a full account of his doings in the premises to this court from time to time; and the said receiver is hereby authorized to use all lawful means to collect and secure the rent of said farm, and to take and maintain the possession of said farm; and the parties to this suit, and their agents and servants, are enjoined from retaining or changing the possession of said farm, or the rents accrued thereon, in any way [to] defeat the said receiver or this order. The said receiver to give bond in the penal sum of two thousand dollars, with security, to the satisfaction of the clerk of this court, conditioned for a faithful account in the premises, and the paying over said money; and

he shall from time to time, as the sums in his [illegible] may [illegible] per, deposite the same in the Ohio Life Insurance and Trust Company, at the best interest that can be obtained for the same, subject to the order of this court; and that out of any money to come to his hands he pay the taxes, if any are on said farm, and redeem and keep the same from any forfeiture on that account. And it is further ordered, that the defendants, in default for not having answered the complainants' bill, file their answers to said bill within thirty days from the close of this term; or in case of default that, as to them, the bill be taken as confessed, and a decree pass against them accordingly, or other proceedings had as this court may direct; and the complainant, in case it be found that the said farm has been sold or returned delinquent for the non-payment of the taxes due, may take all legal steps to redeem the same, applying any sum in the hands of the receiver to effect that object, and take further steps to effect a sale of the property of said bankrupt under the former order of this court. And for the coming in of the reports, and further proceedings, this cause stands continued.

And afterwards, to wit, on the fourth day of January, in the year of our Lord one thousand eight hundred and forty-five, came the defendants, the President, Directors, and Company of the Northern Bank of Kentucky, by Messrs. Chase & Ball, their solicitors, and filed in the clerk's office of said court their answer to said amended bill, in the words and figures following, to wit:

Answer of the Northern Bank of Kentucky.

In chancery.

The separate answer of the President, Directors, and Company of the the Northern Bank of Kentucky, to the amended bill of complaint of Nathaniel McLean, assignee in bankruptcy of John Mahard, junior, complainant, against the President, Directors, and Company of the Lafayette Bank of Cincinnati, their respondents, and others, defendants.

These defendants, now and at all times hereafter, saving and reserving to themselves all benefit and advantage of exception which can or may be had or taken to the manifold errors, uncertainties, and other imperfections in said complainant's said amended bill contained, for answer thereunto, or unto so much thereof as they are advised is or are material for them to make answer unto, these defendants answering say:

For answer to the fifth interrogatory, that at the time of the execution of the said mortgage by said Mahard to them, they did not know that said Mahards were in failing circumstances; that prior to the execution of the said mortgage, several loans had been made by these respondents to said Mahards on their bills, to enable them to meet their bills previously purchased of them by these respondents, without compelling them to sell their produce which they then had on hand, at a time when the market was very unfavorable, and the bills so renewed

matured [illegible] time of renewing the same, and [illegible] the said mortgage; and said Mahards were not then, nor had they ever been, under protest on paper held by these respondents, or in their bank; but as to the situation of their paper in the Franklin Bank of Cincinnati, or in any other bank, these respondents are not informed; that the first protest of their paper in the bank of these respondents was made at New Orleans, on the 16th January, 1842, of which these respondents were advised on the 4th February following; arrangements had been made, however, by said Mahards on the 8th January aforesaid, for the payment of said paper, but the advice thereof did not reach New Orleans in time to save the protest.

And for answer to the sixth interrogatory these respondents say, that they held a mortgage upon the pork house and slaughter house of said Mahards in Covington, which was executed 13th January, 1842, and recorded 15th same month; that the consideration thereof was an indebtedness of said Mahards to these respondents on certain bills of exchange drawn by J. & W. Mahard on Mahard & Brother, then about maturing, and upon which said Mahards wished an extension of time of payment, which indulgence was given by these respondents upon condition of their receiving said mortgage; that the said mortgaged premises are in the possession of these respondents, and they receive the rents and profits arising from the same under an agreement, made between said Mahard and these respondents some considerable time since the execution of said mortgage, that the said rents should be paid to these respondents, to be applied on the indebtedness secured by the said mortgage.

And for answer to the seventh interrogatory these respondents say, that said Mahards were indebted to them in the spring of 1841; that their account with these respondents commenced in 1838, but that all the indebtedness of said Mahards to these respondents in the spring of 1841 was promptly paid them at maturity, and the same constitutes no part of the present indebtedness so secured by the said mortgage.

And for answer [to the] eighth interrogatory these respondents say, that they knew nothing of the pecuniary embarrassments of said Mahards at any time during the year 1841; that the first knowledge they had of said Mahards' embarrassment was in January, 1842, and at that time these respondents supposed they were abundantly able to pay all their debts, but that an immediate payment thereof would require a great sacrifice of their property; that said Mahards did not, nor did either of them, before the execution and record of the said mortgage, represent to these respondents that they were unable to meet their debts; but on the contrary, they represented, and these respondents verily believed, at that time, that they were amply able to do so, but could not do it at the maturity thereof without submitting to great sacrifices in the sale of property, and to avoid this, they asked the extension; that this application, and representation were made on or about the day of the date of the said mortgage, and not at any previous time; that the extension was given in the customary manner by substituted paper at

[illegible] and the same was to be paid out [illegible] proceeds of the produce and other property of said Mahards, as soon as the same could be converted into money without very great loss.

And for answer to the ninth interrogatory these respondents say, that an extension was given, and new paper substituted for that which was maturing, as above stated, and the paper substituted had four months to run at each renewal thereof; that the paper so substituted was protested at maturity, and the paper secured by said mortgage and not due at the date thereof, nor afterwards renewed, was also protested at maturity; and neither the substituted nor original bills secured by said mortgage have been paid.

And these respondents, for answer to the tenth, eleventh, twelfth and thirteenth interrogatories, say, that the loans which said mortgage was given to secure were in renewal of former loans, as above and hereinafter stated, and by which it was hoped said Mahards would be saved from loss on their produce then on hand; and the history of the whole dealings of these respondent with said Mahards is as follows, so far as the same relates in any manner to said mortgage, to wit: On the 28th April, 1841, the bank purchased of J. & W. Mahard their draft on Mahard & Brother, endorsed by Andrew Johnson, for $3500, dated April 28th, 1841, payable in four months after date, at New Orleans, and placed the proceeds thereof, $3395, to their credit, retaining $105 for interest and exchange.

On the 21st of May, 1841, the bank purchased another draft of J. & W. Mahard, on Mahard & Brother, endorsed by Andrew Johnson, for $3500, dated 21st of May, 1841, payable in four months and ten days after date, at New Orleans, and placed the proceeds thereof, $3371 $\frac{67}{100}$ to their credit, retaining $128 $\frac{33}{100}$ for interest and exchange; on the 25th of May, 1841, the bank purchased another draft of J. & W. Mahard, on Mahard & Brother, endorsed by A. Johnson, for $4,656 $\frac{25}{100}$, dated 25th of May, 1841, payable in three months after date at New Orleans, and placed the proceeds thereof, $4,517 $\frac{25}{100}$ to their credit, retaining $139 $\frac{7}{100}$ for interest and exchange; on the 16th of July, 1841, the bank purchased another bill of J. & W. Mahard, drawn on Mahard & Brother, endorsed by Andrew Johnson, for $2,500, dated July 16th, 1841, payable in four months after date, at New Orleans, and placed the proceeds, $2,408 $\frac{33}{100}$ to their credit, retaining $91 $\frac{67}{100}$ for interest and exchange; on the 13th of August, 1841, the bank purchased two other bills of J. & W. Mahard, drawn on Mahard & Brother, endorsed by Andrew Johnson and John McLaughlin, for $4,078 $\frac{43}{100}$ each, dated August 13th, 1841, payable at New Orleans, one in four months, and the other in five months after date, and applied the proceeds thereof, $7,851 $\frac{11}{100}$ to the payment of the bills firstly and thirdly above described, retaining out of the four months' bill $142 $\frac{73}{100}$, and out of the five months' bill $163 $\frac{13}{100}$, for interest and exchange; on the 21st of September, 1841, the bank purchased of J. & W. Mahard another draft, drawn by them on Mahard & Brother, endorsed by A. Johnson and John McLaughlin, for $3,500, dated September 20th,

1841, [illegible]yable [illegible] Orleans four months after date, the proceeds of which, $3,3[illegible] applied by said Mahards to the payment of the bill above mentioned for $3,500, due October 4th, 1841, retaining $105 for interest and exchange; on the 12th November, 1841, the bank purchased of J. & W. Mahard, their bill drawn on Mahard & Brother, endorsed by Andrew Johnson, for $2,500, dated November 10th, 1841, payable at New Orleans four months after date, the proceeds of which, $2,448 $\frac{33}{100}$ were applied by said Mahard to the payment of the bill above named for $2,500, due 29th November, 1841, retaining for discount $51 $\frac{67}{100}$.

On the 3d of December, 1841, the bank purchased of J. & W. Mahard a bill drawn by them on Mahard & Brother, endorsed by Andrew Johnson, dated 1st December, 1841, payable in New Orleans 4 months after date, for $4,078 $\frac{48}{100}$, the proceeds of which, $3,994 $\frac{20}{100}$, were applied by said Mahards to the payment of the bill for $4,078 $\frac{48}{100}$, due December 16, 1841, retaining for discount $84 $\frac{28}{100}$. On the 8th of January, 1842, the bank purchased of J. & W. Mahard, their bill drawn on Mahard & Brother, and endorsed by Andrew Johnson and John McLaughlin, for $4,078 $\frac{48}{100}$, dated 7th January, 1842, payable at New Orleans 4 months after date, the proceeds thereof, $3,994 $\frac{20}{100}$ were applied by said Mahards to the payment of the bill for $4,078 $\frac{48}{100}$, due 16th January, 1842, retaining for discount $84 $\frac{28}{100}$. On the 15th of January, 1842, the bank purchased of J. & W. Mahard their bill drawn on Mahard & Brother, endorsed by Andrew Johnson and John McLaughlin, for $3,500, dated 14th January, 1842, payable at New Orleans 4 months after date, the proceeds of which, $3,430, were applied by said Mahards to the payment of the bill for $3,500, due 23d January, 1842, retaining for discount $70. On the 11th of March, 1842, the bank purchased of J. & W. Mahard their bill drawn on Mahard & Brother, endorsed by A. Johnson, for $2,500, dated 11th March, 1842, payable at New Orleans 4 months after date, the proceeds of which, $2,448 $\frac{33}{100}$, were applied by said Mahards to the payment of their bill for $2,500, due 13th March, 1842, retaining for discount $51 $\frac{67}{100}$. The last four bills above mentioned constitute the present indebtedness of said Mahards to these respondents, secured by the said mortgage, and no other paper has since been discounted by these respondents for the said Mahards; and these respondents further say, that they are a body corporate, situated in, and chartered by, the Commonwealth of Kentucky, and that on or about the 20th day of July, 1842, they filed their bill in the Kenton circuit court, for the State of Kentucky, to foreclose the said mortgage, and on the 20th day of April, 1843, made the complainant, as assignee in bankruptcy, a party of said bill, which suit is still pending and undetermined in the said court; and they insist that no proceedings in this court can oust the said court of Kentucky of their jurisdiction over the said mortgage and the parties to the said suit, and that this court has not jurisdiction of the matters set up in complainants' amended bill. And these respondents further say, that according to the best of their knowledge, information,

said belief, said Mahards were not insolvent at the time of executing the said mortgage, and had then no intention of taking the benefit of the Bankrupt law, but that their insolvency was occasioned by a depreciation in the value of the property then owed by them, subsequent to the date of the said mortgage. And these respondents deny all manner of unlawful combination and confederacy wherewith they are charged; without this, that there is any other matter or thing in the said complainants' amended bill contained material or necessary for these respondents to make answer unto, and not herein well and sufficiently answered, confessed, and avoided, or denied, is true to the knowledge and belief of these respondents; all which matters and things these respondents are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and pray to be hence dismissed, &c., and they have before prayed.

CHASE & BALL,
Solicitors.

STATE OF KENTUCKY,
Fayette county, ss.

In testimony of the truth of the several matters and things in the foregoing answer set forth, the President, Directors, and Company of the Northern Bank of Kentucky, the respondents above named by Matthew T. Scott, their cashier, have hereunto caused to be affixed their corporate seal, and the signature of their said cashier, this 6th day of July, A. D. 1844.

[SEAL.]

M. T. SCOTT,
Cashier of Northern Bank of Kentucky.

And afterwards, to wit, on the fourteenth day of October, in the year of our Lord eighteen hundred and forty-five, the following bond of John Burgoyne, the receiver hereinbefore appointed, was filed in the office of the clerk of said court, to wit:

Bond of Receiver.

Know all men by these presents, that we, John Burgoyne and Joseph Burgoyne, are held and firmly bound unto the United States of America, in the sum of two thousand dollars, to be paid to the United States or their assigns; to the which payment, well and truly to be made, we bind ourselves, our heirs and representatives, firmly by these presents. In testimony whereof we have hereunto set our hands and seals this 14th day of January, 1845. The condition of the above obligation is, that whereas the said John Burgoyne has been appointed receiver in a case pending in chancery, in the circuit court of the United States, in the seventh circuit and district of Ohio, at the December term, 1844, wherein Nathaniel C. McLean, assignee of John Mahard, is complainant, and the President, Directors, and Company of the Ohio Life Insurance and Trust Co. and others are defendants, as will more fully appear by

reference to the [illegible] appointing the said John *Mahard;* now if the said Burgoyne [illegible]thfully discharge his duties as receiver aforesaid, and account for all moneys coming to his hands as such, then this obligation shall be void, otherwise to remain in full force. Witness our hands and seals, the date above.

JOHN BURGOYNE, [SEAL.]
JOSEPH BURGOYNE. [SEAL.]

Witness—
J. L. MINER.

On which said bond is the following endorsement, to wit:
"Approved by me. WM. MINER, *Clerk.*"

And afterwards, to wit, on the seventeenth day of January, in the year of our Lord one thousand eight hundred and forty-five, the following affidavit was filed in the clerk's office of said court, to wit:

Affidavit.

NATHANIEL C. McLEAN, assignee of John Mahard, jr.,
vs.
THE PRESIDENT, Directors, and Company, of the Lafayette Bank of Cincinnati et al.

John Burgoyne, being sworn, deposes and says: That upon the receipt of the writ, a copy of which is hereto annexed, marked "A," appointing him a receiver in the above named cause, and commanding him to do other things more particularly set forth in said writ issued by the order of the circuit court of the United States for the district of Ohio, at the December term, 1844, thereof, he, as soon as was practicable, proceeded to give security according to the command of said writ; and afterwards, to wit, on the fourteenth day of January, A. D. 1845, he proceeded, in company with N. C. McLean, the complainant, and John S. Buckingham, defendant, to make a demand, upon the premises, of the possession of the farm mentioned in said writ, and that he did make such demand, after reading said writ aloud to the said John S. Buckingham; and that he did, at the same time and place, make a further demand of all other matters and things as he was commanded by said writ to do; but that the said John S. Buckingham, with full knowledge of the contents of said writ, avowed himself to be in the possession of the said farm, and declared that he would not obey said writ, but would resist with force the command of said writ; and afterwards, as well as before the reading of said writ, he, the said Buckingham, avowed his intention to hold the possession of the said premises by force, if necessary; and that he at that time had a letter in his possession from his attorney in this cause, advising and counselling him to hold on to the possession of the said premises, and in that, as in all other matters, to disobey the command of said writ. This deponent, therefore, being resisted by the said Buckingham, was unable to execute the command of the said

writ, and believes that it will be impossible to execute said writ without further assistance. JOHN BURGOYNE.

Sworn to and subscribed before me, January 15th, 1845.

WM. MINER, *Clerk*.

Exhibit A.

THE UNITED STATES OF AMERICA,

District of Ohio, ss.

The United States of America, to the President, Directors, and Company of the Northern Bank of Kentucky, Andrew Johnson, John S. Buckingham, the Ohio Life Insurance and Trust Company, the President, Directors, & Co. of the Bank of the U. S., incorporated by the State of Pennsylvania, the President, Directors & Co. of the Commercial Bank of Cincinnati, the President, Directors & Co. of the Franklin Bank of Cincinnati, James Dundas, Mordecai D. Lewis, Samuel W. Jones, Robert L. Pitfield, and Robert Howell, assignees, &c.; John Mahard, senior, John McLaughlin, George Milne, and James Keith, partners under the firm of George Milne & Co., Charles B. Dyer, Frederick Trow, J. C. Avery, late sheriff, and John H. Gerard, sheriff of Hamilton county, Wm. McIntire, and John H. Groesbeck, John C. Culbertson, John Kilgore, David Loring, Fenton Lawson, Lewis Whiteman, and Wm. S. Groesbeck, trustees of the late Franklin Bank of Cincinnati, and to all and singular your counsellors, attorneys, solicitors, and agents, greeting:

Whereas at the December term of the circuit court of the United States, within and for the district of Ohio, begun and held on the third Monday of December, A. D. 1844, the following proceedings were had, to wit:

N. C. McLEAN, assignee of J. Mahard, jr., vs. THE LAFAYETTE BANK et al. } In chancery.

This day came the parties by their counsel, and upon motion of the complainant, and the filing of his affidavit, that J. Buckingham, one of the defendants in this suit, has taken possession of the farm lately occupied by the said Mahard, fully described in the bill, situated near the city of Cincinnati, in the county of Hamilton, Ohio, and holds the snme against the assignee of the bankrupt, receiving and retaining the rents and issues thereof to his own use. This court having heard the arguments of counsel, and fully deliberated thereon, do order that John Burgoyne be, and he is hereby, appointed receiver of this court, and is authorized and empowered, as such, to take possession of the said farm by whatsoever name known, and of the rents, issues, and profits thereof there remaining in specie, or to accrue hereafter, and so to manage or lease the said farm as to obtain the best rent for it until the sale thereof, or the further order of this court, taking, keeping, and reporting a full account of his doings, receipts, and outlays in the premises, to this court from time to time; and the said receiver is hereby authorized to

use all lawful means to collect and secure the rent of said farm, and to take and maintain the possession of said farm; and the parties to this suit and their agents are enjoined from returning or changing the possession of said farm, or the rents accrued thereon in any way, [to] defeat the said receiver or this order; the said receiver to give bond in the penal sum of two thousand dollars, with security to the satisfaction of the clerk of this court, conditioned for a faithful account in the premises and the paying over said moneys; and he shall, from time to time, as the sums in his hands make it proper, deposite the same in the Ohio Life Insurance and Trust Company, at the best interest that can be obtained for the same, subject to the order of this court; and that out of any money to come to his hands he pay the taxes, if any there are, on said farm, and redeem and keep the same from any forfeiture on that account. And it is further ordered, that the defendants, in default for not having answered the complainant's bill, file their answer to said bill within thirty days from the close of this term, or in case of default that as to them the bill be taken as confessed, and a decree pass against them accordingly, or other proceedings had as this court may direct; and the complainant, in case it be found that the said farm has been sold, or returned delinquent for the non-payment of the taxes due, may take all legal steps to redeem the same, applying any sum in the hands of the receiver to effect that object, and take further steps to effect a sale of the property of said bankrupt, under the former order of this court; and for the coming in of the reports and further proceedings, this cause stands continued. (January 1st, 1845.)

We, therefore, fimly enjoin and command you, that from and after your receipt of this our writ by you, or any of you, had from retaining or changing the possession of said farm, or the rents accrued thereon, in any way to defeat the said receiver or this order until our court shall make further order thereupon; and hereof you are not to fail on pain of one thousand dollars, which we will cause to be levied on your goods and chattels, lands and tenements, to our use, if you neglect to obey this our command.

Witness the honorable Roger B. Taney, chief justice of the United States, this 7th day of January, A. D. 1845, and in the 69th year of the American independence.

Attest: WM. MINER, *Cl'k.*

And afterwards, to wit, on the 21st day of January, in the year last aforesaid, came the said complainant, by his solicitor, and filed in the clerk's office of said court his præcipe for a writ of assistance, in the words and figures following, to wit:

Præcipe.

NATHANIEL C. MCLEAN, assignee of J. Mahard, jr.,
vs.
THE LAFAYETTE BANK et al.

Circuit court of the United States, for the district of Ohio.—In chancery.

Issue a writ of assistance forthwith, as required by the 9th article of

the chancery rules, circuit court of U. S., for Ohio, to meet the case made out by the affidavits herewith filed.

BROWN & McLEAN,
WRIGHT, COFFIN, & MINER,
Att'ys for pl'ff.

To the clerk of the 7th circuit court of the U. S., for the district of Ohio, January 17th, 1845.

And thereupon the following writ of assistance was issued, to wit:

Writ of assistance.

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

The United States of America, to the marshal of the district of Ohio, greeting:

Whereas at the December term of the circuit court of the United States, within and for the 7th circuit and district of Ohio, began and held on the third Monday of December, anno domini one thousand eight hundred and forty-four, the following proceedings were had, to wit:

NATHANIEL C. McLEAN, assignee of John Mahard, jr., a bankrupt, complainant,
vs.
THE PRESIDENT, Directors, and Company of the Lafayette Bank of Cincinnati, et al., respondents.

In chancery.

This day came the parties by their counsel, and on motion of the complainant, and upon the filing of his affidavit that J. Buckingham, one of the defendants in this suit, has taken possession of the farm lately occupied by the said Mahard, fully described in the bill, situated near the city of Cincinnati, in the county of Hamilton, Ohio, and holds the same against the assignee of the bankrupt, receiving and retaining the rents and issues thereof to his own use. This court having heard the arguments of counsel, and fully deliberated thereon, do order that John Burgoyne be, and he is hereby, appointed receiver of this court, and is authorized and empowered as such to take possession of said farm, by whatever name known, and of the rents and issues thereof there remaining in specie, or to accrue hereafter, and so to manage or lease the said farm as to obtain the best rent for it, until the sale thereof, or until the further order of this court; taking, keeping, and reporting a full account of his doings, receipts, and outlays in the premises to this court, from time to time; and the said receiver is hereby authorized to use all lawful means to collect and secure the rent of said farm, and to take and maintain the possession of said farm, and the parties to this suit, and their agents and servants, are enjoined from re-

taining or changing the possession of said farm, or the rents accrued thereon, in any way defeat the said receiver or this order. The said receiver to give bond in the penal sum of two thousand dollars, with security to the satisfaction of the clerk of this court, conditioned for a faithful account in the premises, and the paying over said money; and he shall, from time to time, as the sums in his hands shall make it proper, deposite the same in the Ohio Life Insurance and Trust Company, at the best interest that can be obtained for the same, subject to the order of this court, and that out of any money to come to his hands, he pay the taxes, if any are on said farm, and redeem and keep the same from any forfeiture on that account.

And it is further ordered that the defendants in default for not having answered the complainants' bill, file their answers to said bill within thirty days from the close of this term, or in case of default, that as to them be taken as confessed, and a decree pass against them accordingly, or other proceedings had as this court may direct. And the complainant, in case it be found that the said farm has been sold, or returned delinquent for the non-payment of the taxes due, may take all legal steps to redeem the same, applying any sum in the hands of the receiver to effect that object, and take further steps to effect a sale of the property of said bankrupt, under the former order of this court. And for the coming in of the reports and further proceedings, this cause stands continued, (January 1, 1845.)

And the said John Burgoyne having on the 14th day of January, 1845, given bond and security as receiver, pursuant to the order of court; and whereas afterwards, to wit, on the 17th day of January, 1845, Nathaniel C. McLean, assignee of John Mahard, jr., a bankrupt, having upon proof made by affidavit of a demand and refusal of the said John S. Buckingham, to obey the decree and order of our said court, by delivering possession to the said John Burgoyne, receiver as aforesaid, and the said Nathaniel C. McLean, assignee, &c., having sought our writ of assistance therefor, [you] are hereby commanded without delay to assist the said John Burgoyne, receiver as aforesaid, to have full possession of the farm and property described in the foregoing order; and in what manner you shall execute this our writ make known to our said court at the city of Columbus, on the first Monday of July next, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the United States, this 21st day of January, A. D. one thousand eight [L. S.] hundred and forty-five, and in the 69th year of the independence of the United States of America.

Attest: WM. MINER, *Clerk*.

Which said writ of assistance was afterwards returned by the marshal of said district, to whom the same was in form aforesaid directed, with his return endorsed thereon, in the words and figures following, to wit:

Return.

In obedience to the command of this writ, I, on the 5th day of February, 1845, assisted John Burgoyne, esq., the receiver mentioned therein, to take and have full possession of the farm and property within described, and left said receiver in full possession of the same.

JOHN McELVAIN, *Marshal, Ohio district.*

And afterwards, to wit, on the second day of June, in the year last aforesaid, came the said defendants, the trustees of the Franklin Bank of Cincinnati, by W. S. Groesbeck, esq., their solicitor, and filed in the clerk's office of said court their answer to said amended bill of complaint, in the words and figures following, to wit:

Answer of the Franklin Bank of Cincinnati.

The joint and several answer of John H. Groesbeck, John C. Culbertson, John Kilgour, David Loring, Fenton Lawson, Lewis Whiteman, and William S. Groesbeck, trustees of the Franklin Bank of Cincinnati, to the interrogatories in the amended bill of Nathaniel C. McLean, assignee of John Mahard, jr., complainant; the above named respondents, trustees, as set forth in their former answer, reserving to themselves all exceptions and the right to answer further, if found necessary, and admitting nothing in said amended bill charged, for answer to so much of the same as they are advised it is material for them to answer, answer and say:

In answer to the first interrogatory, that the said John Mahard, jr., at the time of filing his petition to be declared a bankrupt, was not the owner of twenty shares of the capital stock of the Franklin Bank of Cincinnati, or of any amount of said stock, but the facts are in regard to the twenty shares of Franklin Bank stock referred to, as they have stated them to be in their former answer; on or before the 8th of March, A. D. 1842, the said bank they represent made an agreement with said Mahard to take of him twenty shares of their capital stock at its par value, as a payment on said Mahard's indebtedness to said bank, and said Mahard agreed to let said bank have the same upon the terms stated. Your respondents represent, however, that the stock has never been transferred pursuant to said agreement, owing to the fact that, for some cause or other, its transfer has been enjoyed by John Mahard, senior, and the complainant in this suit. Your respondents claim the same by virtue of said agreement; and also claim to have the first lien upon the same, by virtue of the charter of said Franklin Bank, which was in force at the time said Mahard, jr., owned said stock, and was indebted to said bank.

In answer to the second interrogatory they state, that they claim said twenty shares of Franklin Bank stock as the absolute owners thereof under said agreement with John Mahard, jr., and as the first lien holders of the same, under the charter of said bank, the consideration of each of which claims appears from what has been already stated.

In answer to the third interrogatory they state, that at the time said

bank released part of in-lot No. 404, from the operation of their mortgage as set forth in their former answer, they entered into an agreement with said Dyer, which is now in his possession, and which he is required to produce, and to which your respondents refer, in which said bank obligated itself to said Dyer alone to indemnify and save him harmless from all loss he might sustain, by reason of a lien of a certain judgment of the Bank of the United States of Pennsylvania, against John Mahard, jr., and John McLaughlin, recovered at the July term, A. D. 1841, of the superior court of Cincinnati, and appealed to the April term, 1842, of the supreme court of Ohio, for Hamilton county, which judgment was for upwards of $2,000 00, and is set forth in the answer of the party in whose favor it was rendered. Your respondents represent that said agreement will show the nature and extent of the obligations referred to, and claim that the same in no wise affects their claim against said Mahard and its security; that said agreement was made with no one but Dyer, and that said bank had a perfect right at the time, and under the circumstances, to make the same without the possibility of loss to themselves; they represent that said Mahard had other and sufficient property to satisfy said judgment, upon which said bank could throw the same for satisfaction, and that said judgment was otherwise and amply secured, and that at the time of said agreement, said judgment was a general lien upon the said Mahard's property.

In answer to the fifth interrogatory they say, that at the time they received the $7,297 33, part of the consideration paid by said Dyer for said part of in-lot No. 404, they are informed and believe that said bank knew that said John Mahard, jr., had failed to meet promptly and at their maturity his engagements—his bills and notes were then matured and unpaid, in the hands of said Franklin Bank of Cincinnati. They further say, that the first time the said Mahards went to protest was on the second day of August, A. D. 1841, as appears from the books of said bank; but that said bank did not know, at that time, that said Mahards were unable to pay their debts. They further say, that said transaction was made and entered into in perfect good faith, and with no notice of the bankruptcy, other than above, of said Mahards, or of their intention to avail themselves of the Bankrupt act, and more than two months before the filing of their first petition.

In answer to the seventh interrogatory they say, that said Mahards were indebted to said bank in the spring of 1841; they became indebted to said bank at the times set forth in their former answer, to which reference is made; and said indebtedness is the same secured by said mortgage to the Franklin Bank, and said mortgage was given to secure it.

In answer to the eighth interrogatory they say, that they are not aware, and do not know, that the said Mahards were embarrassed in the early part of 1841, and do not know when they first became embarrassed. The said Mahards did not represent to said bank, before giving said mortgage, or at the time of giving it, or of its record, that they were unable to meet their maturing liabilities, and ask for an extension. Your respondents here refer, by way of reply to this interroga-

say, to that part of their former answer touching this subject. They received their mortgage before the passage of the Bankrupt act, and when the party executing and delivering it was in high commercial credit and standing, and universally believed to be wealthy. They had never gone to protest in said bank until the second day of August, A. D. 1841, as before stated.

In answer to the ninth interrogatory they say, that no extension was given to said Mahards on their paper, nor was there any substitution of new paper for that which was maturing.

In answer to the tenth interrogatory, they say, that said mortgage to said Franklin Bank was made to secure notes discounted and bills purchased, as shown in their former answer; the notes were discounted for and the bills purchased of said Mahards; the amounts of said notes and bills have already been shown, and are further set forth in detail in exhibit A, hereunto annexed and made part hereof; said exhibit furnishes a full answer to the interrogatories of complainant in reference to the bills and notes, giving their amounts, dates, times to run, rates of discount, rate of interest deducted, and exchange charged on the bills purchased, when purchased and when discounted. It further shows the original of the notes and bills therein set forth, and all renewals and substitutes, with the exception of the notes therein set forth, for $389, $764, $1184, $955, which were renewals at time the mortgage was taken, and by inadvertence were omitted to be noticed as such in the exhibit A, which is taken from the books of said bank. Your respondents are ready to furnish, if required, the originals of each and all of them, but suppose it will not be required, when they say that they were discounted notes, on which no more than 6 per cent. interest was at any time charged. They further show that said exhibit set out the amount retained by said bank in each and every transaction, the amount retained for interest and exchange.

Your respondents further state, that the amount charged for exchange in purchasing said bills, was in each and every instance the fair market rate of exchange at the time of said purchases, that the same were purchased in accordance with banking principles and usages, and in the most perfect good faith. Your respondents represent that said John Mahard, jr., one of the firm of J. & J. Mahard of Cincinnati, and also of the firm of Mahard & Brother of New Orleans, represented to said bank that they had, at the time said bills were purchased, a large amount of pork lying unsold in the city of New Orleans, upon which, it was understood, said bills were drawn, and out of the proceeds of the sale of which they, said bank, expected to be paid. Your respondents claim that said bills were taken of said Mahard in good faith, with no intention or agreement to renew or continue them, and with the calculation they would be paid, and that they had a right to purchase them as they did.

In answer to the 11th, 12th, and 13th interrogatories, your respondents say, that they have already fully answered them in what they have previously stated, and in the exhibit they have hereunto annexed; your

respondents, believing that they have now fully answered, and reserving the right to further answer, if it be found necessary, pray, as in their former answer, for the complete protection of their rights, and that they may go hence with their costs, &c.

W. S. GROESBECK,
Sol. for respond'ts.

The above named respondents being duly sworn, depose and say, that the matters and things set out in the foregoing answer are true in substance and fact, to the best of their knowledge, information, and belief.

J. H. GROESBECK,
J. C. CULBERTSON,
JNO. KILGOUR,
DAVID LORING,
L. WHITEMAN,
FENTON LAWSON,
W. S. GROESBECK.

Witness—WM. B. WOOD.

Sworn to and subscribed before me, this 14th day of December, A. D. 1844.

EBENEZER HARRISON,
Justice of the Peace.

Exhibit A.

J. & W. Mahard's draft, endorsed by J. McLaughlin and Andrew Johnson, on Mahard & Brother, New Orleans, dated Nov. 30, 1840, at 6 mos. date, purchased Nov. 30 - -	$7,000, original paid.
J. & W. Mahard's draft, endorsed by J. McLaughlin and Andrew Johnson, on Mahard & Brother, New Orleans, dated March 30, 1841, at 4 months date, purchased March 31 - -	$5,200, original not paid.
Charged 1½ p. ct. exchange, and 6 p. ct. interest, being - - - -	$182 00, and not renewed.
J. W. Mahard's note endorsed by J. McLaughlin and A. Johnson, dated March 6, 1841, at 95 days date, -	$389 00, renewed.
Interest charged, 6 per ct. - -	6 44
Renewed June 12, at 95 d. d. -	350 00
Interest charged 6 per cent. - -	5 78
Renewed September 18, at 95 d. d. -	315 00
Interest charged 6 per cent. - -	5 20

Renewed January 12, 1842, by note dated December 25, 1841, at 95 d. d.	283 00	
Interest charged 6 per cent.	3 85	
Renewed April 2d, at 95 d. d.	283 00	not paid, and
Interest charged 6 per cent.	4 65	not renewed.
J. & W. Mahard's note, endorsed by J. McLaughlin and A. Johnson, dated March 27, 1841, at 95 d. d.	$764 00	
Interest charged 6 per cent.	12 61	renewed.
Renewed July 3d, at 95 d. d.	687 00	
Interest charged 6 per cent.	11 34	
Renewed October 9, at 95 d. d.	618 00	
Interest charged 6 per ct.	10 20	
Renewed January 19, 1842, at 95 d. d.	556 00	not paid and
Interest charged 6 per ct.	9 15	not renewed.
J. & W. Mahard's note endorsed by J. McLaughlin and A. Johnson, dated December 30, 1840, at 95 d. d.	1,184 00	renewed.
Interest charged 6 per ct	19 54	
Renewed April 7, 1841, at 95 d. d.	1,065 00	
Interest charged 6 per ct.	17 57	
Renewed July 14, at 95 d. d.	958 00	
Interest charged 6 per ct.	15 81	
Renewed October 20, at 95 d .d.	862 00	
Interest charged 6 per ct.	14 25	
Renewed January 26, 1842, at 95 d. d.	186 00	not paid and
Interest charged 6 per ct.	12 25	not renewed.
J. & W. Mahard's note, endorsed by J. McLaughlin and A. Johnson, dated March 20, 1841, at 95 d. d.	955 00	renewed.
Interest charged 6 per ct.	15 76	
Renewed June 26, at 95 d. d.	859 00	
Interest charged 6 per ct.	14 17	
Renewed October 6, by note dated Oct. 2d, at 95 d. d.	773 00	not paid in full,
Interest charged 6 per ct.	12 75	and not renewed.

Part payment upon this note was made of - - - - - - - -	475 00	
J. & W. Mahard's draft, endorsed by A. Johnson and J. McLaughlin, on Mahard & Bros., N. Orleans, dated May 15, 1841, at 5 months date - -	2,000 00	original not paid, and not renewed.
Purchased May 16, at 2½ per ct. exch. and 6 per ct. int., being - -	90 00	
J. & W. Mahard's draft, endorsed by A. Johnson, on Mahard & Brs., N. O., dated June 23, '41, at 4 months and 10 days - - - - - - - -	1,205 00	original not paid. and not renewed.
Purchased June 23, at 1½ per ct. exch. and 6 per ct. int. - - - -	44 18	
J. & W. Mahard's draft, endorsed by A. Johnson and J. Mahard, jr., on Mahard & Brs., N. O, dated July 24, 1841, at 4 months date - - -	6,150 00	original not paid and not renewed.
Purchased July 24, at 1½ per ct. exch. and 6 per ct. int. - - - -	215 25	
J. & W. Mahard's draft, endorsed by A. Johnson and J. Mahard, jr., on Mahard and Brs., N. O., dated August 4, 1841, at 4 mos. and 10 days date -	5,710 00	original not paid. and not renewed.
Purchased Aug. 4, at 1½ per ct. exch. and 6 per ct. int. - - - -	209 37	
J. & W. Mahard's draft endorsed by Stubbs & Andrew, on Mahard & Brs., N. O., date Oct. 6, at 4 mos. date -	1,237 08	original not paid. and not renewed.
Purchased Oct. 6, at 1½ per ct. exch. and 6 per ct. int. - - - -	37 08	
Wm. Jno. Macartney's draft, endorsed by J. & W. Mahard, on Mahard & Brs., N. O., dated Oct. 27, at 4 mos. date - - - - - - -	650 00	original not paid.
Purchased Oct. 27, at 6 p. ct. int. (no ex.)	13 00	and not renewed.
John Stubbs' bill, endorsed by Stubbs & Andrew and J. & W. Mahard, on Mahard & Brs., N. O., dated Nov. 17, at 4 mos. date - - - -	1,820 00	original not paid and not renewed.
Purchased Nov. 20, at par; no int., no exch. - - - - - - -	-	

Levi Ashbr[illegible]'s draft, endorsed by A. Johnson and [illegible] & W. Mahard, [illegible]hard & Bro., N. O., dated Dec. 9, at 3 mos. date - - - - -	800 00	original not paid,
Purchased Dec. 13, at 6 p. ct. int., no ex.	12 00	and not renewed.
J. & W. Mahard's note, endorsed by A. Johnson and Jno. McLaughlin, dated Jan. 8, 1842, at 95 days' date; discounted Jan. 12, 1842 - - -	695 00	
Interest charged 6 per ct. - - -	11 00	

And afterwards, to wit, on the seventh day of July, being at the July term of said court, in the year of our Lord eighteen hundred and forty-five, came the said complainant, by his solicitors, and filed in court here the following notice, to wit:

N. C. McLean, assignee of Mahard,
vs.
Buckinghams and others.

The defendants in the above cause, John S. and Mark Buckingham, will take notice, that at the next term of the circuit court of the United States, to be held at Columbus, in the State of Ohio, in the month of July next, the complainant will move the court to attach and commit the said Buckinghams for having refused to obey, and for having violated the injunction and order of the said circuit court, made at the December term of said court last past.

June 19, 1845.

WRIGHTS & MINER,
BROWN & McLEAN,
Attorneys for complainant.

Received, Cincinnati, 24th June, 1845, a true copy of the foregoing from Capt. Roedter, deputy marshal, U. S., for J. S. & M. Buckingham.

W. M. CORRY,
Their Solicitor.

And afterwards, to wit, on the ninth day of July, being at the July term last aforesaid of said court, the following order was entered in this case, to wit:

Order of court.

In this case, the death of William McIntire, one of the defendants, is suggested; and thereupon it is ordered, on motion of Daniel Van Matre, solicitor of James Clark, executor of said William McIntire, deceased, and by the consent of the complainant, that the said James Clark, executor as aforesaid, be made a party defendant; and the said defendant, by his solicitor, appeared and filed his answer, which is in the words and figures following, to wit:

Answer of James Clark.

The answer of James Clark, of the county of Hamilton in the State of Ohio, executor of the last will and testament of William McIntire, late of said county, deceased, to the bill of revivor in chancery, filed by Nathaniel C. McLean, assignee in bankruptcy of the effects of John Mahard, jr., against the President, Directors, and Company of the Lafayette Bank of Cincinnati, and this respondent and others, in the circuit court of the United States, for the 7th circuit and district of Ohio: This respondent saith, that the said William McIntire died a short time before the 25th of March, in the year eighteen hundred and forty-five, having made a last will and testament, by which this respondent was appointed his executor; and that on the said 25th day of March, 1845, the said will of William McIntire was proven and admitted to record in the court of common pleas in and for the county of Hamilton, in the State of Ohio, sitting as a court of probate, and that this respondent was then and there duly qualified as executor aforesaid, and is now acting as such. This respondent adopts the answer of his said testator, William McIntire, in this case in every respect, and prays as the said William McIntire hath by his said answer prayed.

DANIEL VAN MATER,
Solicitor for James Clark, executor of William McIntire, deceased.

And afterwards, to wit, on the eleventh day of July, being at the July term last aforesaid of said court, the following order was entered in this case, to wit:

Order of court.

On motion of counsel, it is ordered that leave be given to the parties in this cause, to examine any other party, as a witness, subject to all legal exceptions. It is also ordered that the sale of the premises described in the complainant's bill, heretofore ordered, be suspended until the further order of this court; and it [is] also ordered, by consent of counsel, that the cause stand for hearing at chambers in Cincinnati, on the last Monday of September next ensuing, but said hearing shall not be had if any of the counsel of the plaintiff or defendants shall be unable to attend.

And afterwards, to wit, on the twelfth day of July, in the year and at the term last aforesaid of said court, came the defendants, the President, Directors, and Company of the Lafayette Bank of Cincinnati, by their solicitors, and filed in court here their answer to said amended bill in the words and figures following, to wit:

Answer of the Lafayette Bank of Cincinnati.

Circuit court of the United States, 7th circuit and district of Ohio. In chancery.

The separate answer of the President, Directors, and Company of the Lafayette Bank of Cincinnati, to the amended bill of complaint of

Nathaniel C. McLean, assignee in bankruptcy of John Mahard, jr., complainant, against these [illegible] and others: These respondents, reserving to themselves all benefit of exceptions to the said amended bill, for answer to so much thereof as they are advised it is material for them to answer, say, in answer to the first interrogatory, that said John Mahard was the owner of forty-nine shares of the capital stock of the bank of these respondents, on each of which the sum of one hundred dollars had been paid; that he became the owner of said shares, so far as these respondents are advised, on the 13th day of September, 1841, and afterwards transferred the same to the cashier of said bank, as collateral security for the debt of J. and W. Mahard to these respondents, and these respondents now claim to have the control of said shares in virtue of said transfer, and also in virtue of their lien upon the capital stock of said bank, owned by debtors to the same, which lien is created and confirmed by the charter granted to these respondents by the legislature of the State of Ohio. In answer to the second interrogatory these respondents say, that on the 15th day of December, 1841, they purchased a draft of that date for thirty-four hundred and twenty dollars, drawn by John McLaughlin, on Mahard & Brothers, at New Orleans, in the State of Louisiana, payable sixty days after date, to the order of and endorsed by J. and W. Mahard, which draft was purchased to enable the said J. McLaughlin to take up a draft for the same sum, drawn by him on said Mahard & Brother, and accepted by them, and endorsed by said J. and W. Mahard and Andrew Johnson, dated July 13, 1841, and payable four months after date. These respondents took no security for this bill, relying upon the ability of the parties, and especially upon that of J. and W. Mahard, for prompt payment at maturity, and were assured by the said John Mahard that it would be so paid; but to the surprise of these respondents said bill was protested for non-acceptance and non-payment. These respondents have since learned that a mortgage was executed by John Mahard to Andrew Johnson, to secure the payment of said bill upon which the endorsement of said Johnson was intended to be given, but omitted through inadvertence, upon all of said Mahard's interest and estate in in-lot No. 460, in Cincinnati, which mortgage was dated, acknowledged, and recorded, on the 16th February, 1842, and is set up in the answer of the trustees of the Commercial Bank of Cincinnati, filed in this cause; and these respondents claim the benefit of said mortgage. These respondents further state that after the protest of said bill the said drawer and endorser called on these respondents, and insisted that the said shares should be applied to the payment of said draft, and these respondents insist that the said shares ought to be so applied, and that they have a right so to apply them under their charter aforesaid, but if the court should otherwise determine, then these respondents claim and insist that the said stock shall be applied in payment, so far as the same will go, of the first instalment of the said mortgage debt of said J. and W. Mahard to these respondents, according to the transfer of said John Mahard for that purpose.

In answer to the fifth interrogatory these respondents say that at the time of the execution of the mortgage held by them on the 7th December, 1841, they did not know that the said J. & W. Mahard were in failing circumstances, but, on the contrary, supposed that they were able to pay, and would pay, all their debts in full; they were not then under protest in respondent's bank; nor were they, nor had they been, so far as these respondents then knew, or now know, under protest in any other bank. On the 18th November, 1841, a bill of J. & W. Mahard, discounted and held by these respondents, was protested at New Orleans, but was arranged for and taken up by them to the satisfaction of these respondents. This was the only bill of said J. & W. Mahard which was protested to the knowledge of these respondents prior to the execution and record of said mortgage.

In answer to the seventh interrogatory these respondents say, that in the spring of 1841 the said J. & W. Mahard were indebted to them on the notes discounted in the sum of five hundred dollars, but this indebtedness is not the same indebtedness secured by said mortgage, nor any part thereof; these respondents were also in the habit, in the spring of 1841 and previously, of buying the bills of said J. & W. Mahard, who were produce dealers in extensive business; but these bills were always paid at maturity, and did not, so far as respondents are advised, constitute any part of their indebtedness secured by the mortgage of December, 1841.

In answer to the eighth interrogatory these respondents say, that they were not at all aware, nor do they believe, that J. & W. Mahard were embarrassed in the early part of 1841; but aver, on the contrary, that then and until near the close of that year they met all their engagements promptly. In the month of October, 1841, Mr. John Mahard addressed a letter to Mr. Josiah Lawrence, president of the respondent's bank, stating that they would require a considerable sum to enable them to meet the balance against them growing out of the operations of the season; that he possessed real estate to double the amount of the anticipated balance against them, and desired to continue their business as usual, and requested a loan of fifteen thousand dollars to enable them to take up a portion of the drafts held by the respondents, offering to secure the repayment of the same in one, two, and three years, with interest every three months by mortgage on a portion of said real estate; to which request these respondents acceded, not having the slightest doubt of their ability to pay all their debts, and meet their payments as they became due. The respondents had no other knowledge of the circumstances of said J. & W. Mahard prior to the execution and record of said mortgage.

In answer to the ninth interrogatory these respondents say, that no extension was given by them, nor was any new paper substituted for that which was maturing. These respondents loaned to the said J. & W. Mahard the sum of fifteen thousand dollars, at Cincinnati, at or about the date of said mortgage, to enable them to take up a portion of the drafts on which they were liable, as already stated. These re-

respondents have already stated that the first and only draft of said J. & W. Mahard not paid at maturity to the knowledge of these respondents, was protested on the 18th November, 1841, but was arranged and taken up to the satisfaction of these respondents; all other drafts of said J. & W. Mahard were taken up by them as they became due at New Orleans, whether with the proceeds of the loan made by these respondents as aforesaid, or not, these respondents have no positive knowledge when the said drafts were paid; these respondents regarded the debts evidenced thereby as paid and fully discharged and extinguished.

In the foregoing answer respondents do not include the draft drawn by McLaughlin, the circumstances connected with which were stated in their answer to the second interrogatory.

In answer to the tenth interrogatory these respondents say, that the mortgage under which they claim was made to secure the payment of a loan of money by the respondents to said J. & W. Mahard; that they discounted two notes for said J. & W. Mahard, one of five thousand dollars and one of ten thousand dollars, on the fourteenth day of December, 1841, which notes had then ninety-two days to run, and were to be renewed without reduction for one year, then one-third to be paid, and so on until final payment in three years; that the proceeds of said notes, reserving the sum of two hundred and thirty dollars, the interest for ninety-two days, were placed to the credit of said J. & W. Mahard.

In answer to the eleventh interrogatory these respondents say, that the said loan was not made in renewal of a former loan; the respondents had not been in the habit of loaning money to any extent to the Messrs. Mahard, but had been in the habit of purchasing their bills, especially New Orleans, founded on shipments of produce in the market at the ordinary market rates; that in this way they purchased the several bills which it was the object of said loan to enable the said J. & W. Mahard to pay; these bills were all drawn by the said J. & W. Mahard upon Mahard & Brother, at New Orleans, in the State of Louisiana, a house regularly established and doing business at New Orleans aforesaid, and having one or more of its partners residing there, and were all endorsed by John McLaughlin, or Andrew Johnson, or both of them, and were all purchased by these respondents at the current market rates as bona fide bills of exchange, predicated upon shipments of produce to said Mahard & Brother; the first of these bills was for $5,100, dated July 5, 1841, had four months and ten days to run when discounted, was due 18th November, 1841, the proceeds, $4,936, were placed to the credit of J. & W. Mahard, $164 was retained by the bank for interest at the rate of six per centum and exchange; the second was for $4,000, dated August 24th, 1841, had four months to run, matured December 27th, 1841, the proceeds, $3,860, were placed to the credit of J. & W. Mahard, $140 were retained by the bank for interest at the rate aforesaid and exchange; the third was for $3,050 75, dated September 1st, 1841, had four months to run, matured January 4th, 1842, the proceeds, $2,943 96, were placed to the credit of J. &

W. Mahard, and $106 79 were ... the bank ... rate aforesaid and the exchange; the fourth and last was for $2,408 50, dated September 14th, 1841, had four months to run, matured January 17th, 1842, the proceeds, $2,376 59, were placed to the credit of J. & W. Mahard, and $86 21 were retained by the bank for interest at the rate aforesaid and exchange; the exchange charged in each case was the customary and regular rate at the time of the discount of the bills; and these respondents expressly deny that any illegal interest was taken or charged on said bills or any of them.

In answer to the twelfth interrogatory these respondents say, that no loans were made, or bills or notes discounted, in renewal of the debt due to respondents from the said J. & W. Mahard, unless the facts stated in the preceding answer amount to such renewal.

In answer to the thirteenth interrogatory these respondents say, that no bills or notes have been discounted by them since the execution of their said mortgage, in renewal of any paper of said J. & W. Mahard. It was the original understanding, as has been already stated, that the notes secured by said mortgage should be renewed every three months, but they were never renewed, and no application for renewal was ever made. These respondents further answering say, that at the October term 1842, they obtained a decree in the superior court of Cincinnati, against the said John Mahard and the said complainant, for the sale of the said mortgaged property; for the satisfaction of their said mortgage debt; which decree still remains unreversed and in full force; and these respondents insist that the said decree is a bar to any proceedings in this court to have said real estate so mortgaged as aforesaid sold by said complainant. And these respondents, having fully answered, pray to be hence dismissed with their costs.

CHASE & BALL, *Solicitors for respondents.*

THE STATE OF OHIO,
Hamilton county, ss.

In testimony of the truth of the several matters and things in the foregoing answer set forth, the said the President, Directors, and Company of the Lafayette Bank of Cincinnati, (a body corporate and politic, created by the laws of the said State of Ohio,) by William G. W. Gano, their cashier, have hereunto affixed their corporate seal, with the signature of their said cashier, this twenty-fifth day of June, A. D. 1845.

[L. S.] W. G. W. GANO.
Cashier.

We consent that the foregoing answer may be filed, reserving our right to continuance, if we have such right.

July 1st, 1845. Considered as filed from this date, July 1st, 1845.

United States of America, 7th circuit and district of Ohio.

Personally appeared before me, James W. Taylor, a commissioner of the circuit court of said circuit and district, duly qualified, W. G.

... being duly ... with, that he has been ... of the Lafayette Bank of Cincinnati from its first organization, and has an intimate knowledge of its transactions, and that the statements contained in the foregoing answer are true to the best of his knowledge and belief.

W. G. W. GANO.

Sworn to and subscribed before me. this 15th day of July, 1846.

JAMES W. TAYLOR,
Master Commissioner, C. C. U. S.

And afterwards, to wit, at the December term of said court, in the year eighteen hundred and forty-five, this cause was continued.

And afterwards, to wit, on the thirtieth day of May, in the year of our Lord one thousand eight hundred and forty-six, came the defendants, the Ohio Life Insurance and Trust Company by their solicitor, and filed in the clerk's office of said court their answer, in the words and figures following, to wit.

Answer of the O. Life Ins. and Trust Co.

The answer of the said Ohio Life Insurance and Trust Company, one of the defendants to the bill of complaint of Nathaniel C. McLean, complainant.

These respondents, for answer to said bill, or to so much and such parts thereof as they are advised it is material for them to make answer unto, come and say, it is true, as alleged in said bill, they did on the twentieth day of August, 1842, file their bill in the superior court of Cincinnati, substantially in the following words, to wit;

To the honorable David K. Este, judge of the superior court of Cincinnati, within and for the county of Hamilton, and State of Ohio, in chancery sitting; humbly complaining, your petitioners, John McLaughlin and the Ohio Life Insurance and Trust Company, respectfully represent, that on the twenty-sixth day of March, in the year eighteen hundred and forty-two, one William Mahard, being seized in fee of the premises hereinafter described, by deed of that date duly executed and delivered, did grant and convey to Andrew Johnson, his heirs and assigns, the following described real estate, situate in the city of Cincinnati and county aforesaid, to wit:

All the west half of the frame warehouse, and the ground on which it stands, being part of lot No. 460, situated on the southwest corner of Water and Walnut streets, in said city, beginning on the south line of Water street, at a point half way between the brick warehouse occupied by J. and W. Mahard, and the northeast corner of C. B. Dyer's lot, and running thence southwardly on a line parallel with Walnut street, to a point on a line with the north wall of the stone warehouse, thence westwardly, on a line parallel with Water street, to a point half way between the stone warehouse and the line of Dyer's lot; thence southwardly, parallel with Walnut street, to the northern boundary of the wharf; thence westwardly, with said boundary to said Dyer's south

east corner; thence northwardly with Dyer's line, [illegible] thence eastwardly, with the line of Water, twenty-three feet more or less, to the place of beginning, with the privileges and appurtenances thereunto belonging; to which said deed was annexed a condition substantially as follows, that if the said William Mahard, or his legal representatives, should pay to the said Johnson, his heirs and representatives the sum of fifty-six hundred and eighty dollars, and interest according to the tenor and effect of three certain drafts, drawn by J. and W. Mahard on Mahard & Brother, one dated November sixth, 1841, and payable to the order of said Andrew Johnson, ninety days after date, for nine hundred and fifty dollars; one dated May seventeenth, 1841, and payable four months after date to the order of said Andrew, for four thousand one hundred and twenty dollars; and one dated October 28th, 1841, and payable in four months after date, to the order of said Andrew, for six hundred and ten dollars, then said deed should become void; that said deed of mortgage was duly left for record by said Johnson, at the recorder's office of said county, on the fifth day of April, in the year first aforesaid, all which several matters will more fully appear by reference to said deed, and the endorsement thereon in the handwriting of Griffin Yeatman, recorder of said county, copies whereof are filed herewith, marked "A," and made part of this petition. Your petitioners further show that the drafts referred to in the condition of said deed were all drawn by John Mahard, and William Mahard, partners trading in Cincinnati, under the name of J. and W. Mahard, upon the same parties trading in New Orleans, under the name of Mahard & Brother; that the same were severally endorsed by the said Andrew Johnson, and by your petitioner John McLaughlin, for the mere accommodation and benefit of said John and William Mahard, and so negotiated; and the proceeds thereof received solely by the said J. and W. Mahard. The said Andrew and your petitioner, McLaughlin, being in truth but co-sureties for said John and William. Your petitioners further show that at and long before the time of making the said mortgage, the draft secondly above referred to in the condition thereof, to wit; for four thousand one hundred and twenty dollars, had in fact been taken up, and substituted by another for the same amount, dated the sixth day of September, eighteen hundred and forty-one, drawn by the said J. and W. Mahard, upon Mahard & Brother, at New Orleans, in favor of said John McLaughlin, or order, payable in four months after date, endorsed by said McLaughlin and Johnson in manner aforesaid, as co-sureties for the accommodation of said John and William Mahard, and by the latter negotiated for their own sole benefit, and for the full value thereof with your petitioners. The Ohio Life Insurance and Trust Company, who then held and still hold the same, ready to be produced as this honorable court may direct, and although said mortgage specified the bill thus taken up as aforesaid, yet it was intended to cover and secure that last above described, given in lieu thereof, and which was always regarded and treated by the parties thereto but as an extension and continuance of the same liability,

mentioned by the first named bill [illegible] mistake the said deed re[illegible] and describes the said first named bill as the one intended to be secured thereby, when in truth it should have set forth and described the one last above specified and given as a substitute therefor.

That at the time when said mortgage was executed the liability of all said parties to said last mentioned bill had become entirely fixed, payment thereof having been regularly demanded at maturity of the same from the said Mahard & Brother, at New Orleans aforesaid, and by them refused, and of all which the said McLaughlin and Johnson had been duly notified. Your petitioners further show, that the said John and William Mahard have not, as yet, paid the said bill nor any part thereof, nor in any wise indemnified or procured the release of your petitioner, the said McLaughlin and the said Andrew, from the payment thereof; but, on the contrary, the whole amount of the same, with interest thereon, is due to the said the Ohio Life Insurance and Trust Company, and the said McLaughlin and Johnson are justly liable to the payment thereof by virtue of their endorsements as aforesaid; whether the others of said bills specified in the condition of said mortgage have been paid, either in whole or in part, or whether said Johnson and McLaughlin are still liable thereon; or, if unpaid, who are the holders of the same, your petitioners are entirely unadvised. Nevertheless, having heard nothing thereof, your petitioners have good reason to believe, and therefore charge the fact to be, that the same have been discharged. If unpaid, your petitioners pray that the holders thereof, when discovered, may be made parties hereto. Your petitioners further show, that the said Ohio Life Insurance and Trust Company, after the purchase of the bill by them as aforesaid, from time to time, (by Micajah T. Williams, president thereof,) frequently requested of the said John Mahard additional security for the payment of said bill, who in truth promised to furnish the same as required. Finally, on or about the sixth day of April last, said Mahard being urgently pressed to comply with said engagement, informed said Williams that his brother, William Mahard, had given a mortgage to Andrew Johnson (being the one above set forth) for the purpose of securing the bill aforesaid, which was intended as well for the benefit of said Ohio Life Insurance and Trust Company as of said Johnson, and that the same had been duly left for record in said county; that your petitioners, the Ohio Life Insurance and Trust Company, thereupon on said day caused search to be made in the recorder's office of said county, and finding that said mortgage had been duly left for record, (as stated by said Mahard,) confidently relied upon the benefits thereof, and had well hoped the same would in fact have been recorded, and the security intended to be afforded thereby fully preserved. But so it is, as your petitioners aver, and before the said mortgage had in fact been recorded in said county, John S. Buckingham and Mark Buckingham, of the same county, combining and confederating with divers persons to your petitioners unknown, (who, when discovered, they pray may be made defendants hereto,) to injure and oppress your petitioners, well knowing the pre-

falsely and fraudulently ... to the said ... mortgage aforesaid was of no value to him; that he ... already ... tried ... involved as surety for said John and William Mahard, and could not derive any advantage from said mortgage; and thereby, and by other false and fraudulent representations, persuaded the said Andrew that said mortgage was not of sufficient value to justify the expense of recording the same, and so induced him, without the knowledge, consent, or even suspicion of your petitioners, to withdraw the same from the recorder's office aforesaid, and before it could be entered of record by the recorder of said county. That whilst the said Andrew was on his way from the office aforesaid to his residence, he was accosted by the said John S. Buckingham, who expressed a desire to see the said mortgage, and show the same to William M. Corry, esq., his attorney; and thereupon said Andrew delivered the same to the said John for the purpose aforesaid, expecting to receive it back whenever demanded. But so it is, a few days afterwards said Mark Buckingham took said mortgage to said Andrew Johnson, showed him the endorsement thereon in the handwriting of said Corry, purporting to be an acknowledgment of the satisfaction thereof, and requested him to sign and execute the same, but said Andrew refused so to do; nevertheless said John and Mark Buckingham, under various pretexts and excuses, sometimes alleging a promise on the part of said Johnson to cancel said mortgage, have utterly neglected and refused to restore the same to him, or allow it to be placed of record in said county, although repeatedly requested so to do; but, on the contrary, have deposited the same with said Corry, under strict injunctions not to permit it to be taken away by said Johnson, or those claiming under him, upon any consideration whatever, and in the hands of whom it still remains, subject alone to the disposition of said Mark and John; thus exposing your petitioners to the loss entire of their security as aforesaid. Whereas in truth your petitioners aver that no such promise ever was made by the said Andrew, and if it had been, as thus alleged, your petitioners aver that said promise was without adequate consideration received by said Andrew, and so of no binding force in equity. And your petitioners, still further protesting that no such promise was made by said Andrew, insist they were not parties thereto; that the same was made without their consent, was in fraud of their just rights and equity in the premises, and could not, therefore, justly prejudice or impair the same. Your petitioners further show, that on the eighth day of April last, in the April term of the supreme court for said county, the said John S. Buckingham caused a judgment to be entered up in said court in his favor for the benefit of himself and the said Mark against the said John Mahard and William Mahard, for the sum of besides costs, the same being founded on an alleged warrant of attorney in that behalf, purporting to have been executed by the said John Mahard, in his own right, and as attorney for William Mahard, and whereby the said William M. Corry was authorized to consent to said judgment on their behalf; whereas in fact, as your petitioners aver, the said John Mahard had no

... the said ... the execution in his behalf ... aforesaid warrant, and if any such did exist, they call for the production thereof; and your petitioners charge, that the principal if not the sole object of making the said William a party to said judgment was to create a lien for the amount thereof in favor of the said John S. Buckingham and Mark Buckingham, or one of them, upon the real estate of the said William, mortgaged as aforesaid, and thus wrongfully displace, if not entirely defeat the rights of your petitioners in the premises.

Your petitioners further show, that as they are now advised and believe, the said John and William Mahard, and said Johnson, are now hopelessly insolvent, and said mortgaged premises furnish the only means of enforcing from them the payment of the amount due on the bill aforesaid; that said Andrew Johnson is also greatly embarrassed, if not insolvent, and unless said mortgaged premises can be subjected to the payment thereof, your petitioner, the said McLaughlin, will be wholly remediless in the premises. And forasmuch as your petitioners have no adequate remedy at law, they pray the interference of this honorable court herein, that the said John and William Mahard, John and Mark Buckingham, Andrew Johnson, and William M. Corry, may be made defendants hereto, and severally required to give full and perfect answer to all the matters herein before alleged, and especially that the said John and Mark Buckingham, and William M. Corry, or which soever has possession thereof, be required to produce and exhibit the mortgage aforesaid; and if said John and Mark allege any agreement or promise on the part of said Andrew for the cancelment of said mortgage, then that they state to whom, when, where, and in whose presence made, the consideration thereof, to whom paid; and all the circumstances and particulars of the same. That the said John and Mark set forth the consideration on which said judgment is founded, with the items and particulars thereof, the amount justly due to each thereon, and whether no part of the same has been paid, that the said John Mahard set forth and exhibit the original authority, if any, under which he assumed to execute the warrant of attorney aforesaid, on behalf of the said William Mahard, and set forth the time when the same was given, and to whom.

And on a final hearing of the premises, may it please your honor to order and decree that the rights of your petitioners under said deed of mortgage may be established as against the said John and Mark Buckingham, and said William Mahard, or any other parties claiming under them; that said John and Mark may be forever enjoined from setting up any claim under their said judgment, as against the said mortgage to the premises therein set forth, and to the prejudice of your petitioners therein; that an account may be taken of the amount due the said the Ohio Life Insurance and Trust Company upon the bill aforesaid, and justly chargeable on said premises; and in case the said John and William Mahard, or the other defendants claiming under them, shall fail to pay the same in such reasonable time as this honorable court shall appoint, then that mortgaged premises may be sold in due

of law, for the payment [illegible] barred [illegible] right of redemption of the defendants therein; and to grant to your petitioners, and each of them, such other and further relief in the premises as may be consistent with equity and good conscience. And your petitioners, as in duty bound, &c.

D. M. SPENCER, *Sol.*

Copy of the bill of exchange referred to.

"Exchange for $4,120. CINCINNATI, *September 6th*, 1841.

Four months after date of this first [bill] of exchange [and] second of the same tenor and date unpaid, pay to the order of John McLaughlin forty-one hundred and twenty dollars, for value received, and place the same to account of your obedient servants,

J. & W. MAHARD.

To MAHARD & BROTHER, New Orleans.

Endorsed, JOHN McLAUGHLIN,
ANDREW JOHNSON."

Accepted, MAHARD & BROTHER.

These respondents in further answering say, that they have recently been advised that the two bills secured by said mortgage, and not held by them, were not endorsed by the said McLaughlin, and are still unpaid, and now held by George Milne, one of their co-defendants; and without this, as far as they know or believe, the allegations of their said bill are true in substance and matter of fact; and having answered, they pray, &c.

V. WORTHINGTON, *Sol.*

[L. S.] The Ohio Life Insurance and Trust Company have hereto caused their seal to be affixed in verification of the foregoing answer on their behalf, May 27, 1846.

And afterwards, to wit, on the twentieth day of July, being at the July term of said court, in the year of our Lord eighteen hundred and forty-six, came the defendant John McLaughlin, by Charles Fox, esq., his attorney, and filed his answer in the words and figures following, to wit:

Answer of John McLaughlin.

The separate answer of John McLaughlin to the bill of complaint exhibited against himself and others, by Nathaniel McLean, assignee of John and William Mahard, in the seventh circuit court of the United States.

This respondent, for answer unto so much of said bill as he is advised is material for him to make answer unto, he answers and says, he admits said John and W. Mahard applied for and obtained the benefit of the Bankrupt law, as set forth in said bill. He also admits that said John and William Mahard had, prior to their failure, been doing business as partners, at Cincinnati and New Orleans, as set forth in

bill. This respondent says that prior to the 7th day of December, the year 1841, he had been in the habit of endorsing and drawing notes for the accommodation of said J. & W. Mahard, and on the seventh day of December, in the year 1841, at the request of said John Mahard, jr., this respondent endorsed the note of J. & W. Mahard, made in favor of this respondent for the payment of ten thousand dollars, at the Lafayette Bank of Cincinnati, in ninety-five days, and which note was discounted by the said President, Directors, and Company of the Lafayette Bank for the benefit of said John Mahard and William Mahard, and the proceeds thereof were used by said Mahards, or applied to their credit. And this respondent further answer[ing] says, the said John Mahard, jr., together with his wife, did on the said seventh day of December, in the year eighteen hundred and forty-one, make, execute, and deliver, to the said President, Directors, and Company of the Lafayette Bank of Cincinnati, a mortgage on his real estate described in said bill, and which mortgage was made to secure the payment of said note of ten thousand dollars so endorsed by this respondent, and he insists said mortgage premises ought to be sold, and out of the proceeds of said sale ten thousand dollar note ought to be first paid.

Respondent in further answering says, that on the 15th day of December, in the year of 1841, at the urgent solicitation of John Mahard, and for the benefit and accommodation of said J. & W. Mahard, respondent drew a draft for the payment of $3,420, bearing date the 15th day of December, 1841, drawn by respondent in favor of J. & W. Mahard, and which last draft was addressed to the house of Mahard & Brother, in New Orleans, and was payable at New Orleans in sixty days; and which draft was protested for non-acceptance, and also for non-payment, and now remains unpaid. This latter draft was wholly for the accommodation of said John Mahard and William Mahard, and was discounted by the said President, Directors, and Company of the Lafayette Bank of Cincinnati for the said J. & W. Mahard, and by them endorsed, and the proceeds thereof received by, or applied to, the credit of said John Mahard and William Mahard, and no part thereof was ever received by this respondent.

This respondent for further answer says, that said John Mahard, jr., did, on the sixteenth day of February, in the year 1842, convey to said Andrew Johnson, by way of mortgage, the interest which said John Mahard, jr., had in lot No. 460, as known on the plan of in-lots of Cincinnati, and the same as described in said mortgage deed referred to in complainants' bill; and which mortgage was intended to secure the payment of all notes and drafts drawn or endorsed by said Johnson and respondent, or by either of them, and was intended to secure them, and each of them, against all liability on account of the drafts and notes endorsed or drawn for the accommodation of said Mahards. And this respondent insists, that he is entitled to have the said mortgaged property sold, and the proceeds of sale applied to the payment of the several drafts and notes drawn or endorsed by this respondent for the accommodation of said J. & W. Mahard; and which mortgage was duly recorded for

benefit of the said John[illegible]dent, [illegible] said bills and notes mentioned in, and intended [illegible] said mortgage, whereby respondent and said holders had a vested interest, which could not be divested by the act of the said Johnson. Nevertheless, respondent has been informed and fully believes that the said Andrew Johnson, at the instigation of John S. and Mark Buckingham, or one of them, and without knowing that this respondent, or any other person, had any interest in said mortgage premises, and without intending to affect the interests, either legal or equitable, of other parties in said mortgage, did, on the 14th day of April, in the year 1842, at the request and urgent solicitation of said John S. Buckingham, enter on the records of Hamilton county as follows: "I have this day released and quit-claimed all my right, title, and interest to the within mortgage premises, and do hereby cancel this instrument, and discharge my lien. The recorder will enter satisfaction in full upon the face of the record." Although he never received any consideration therefor, nor was there in fact any one of said debts, so secured by said mortgage, paid in whole or in part, and the satisfaction so entered was in fact fraudulent and void, as to this defendant and all the holders of the paper secured by said mortgage.

This respondent also states, for further answer, that he has been informed and believes the said William Mahard did, on the 26th day of March, in the year eighteen hundred and forty-two, execute and deliver to said Andrew Johnson a mortgage deed conveying to said Johnson a lot of land fronting on the south side of Water street, in Cincinnati, twenty-three feet, being part of in-lot No. 460, next adjoining a lot of C. B. Dyer; for the conditions of which, and a more particular description of the premises therein described, respondent refers to said mortgage, which mortgage was received by said Andrew Johnson from John Mahard, jr., on or about the fifth day of April, 1842, and was by said Andrew Johnson, on the fifth day of April, 1842, duly deposited with the recorder of Hamilton county for record; and being so deposited, was, as this respondent insists, out of the power and control of said Johnson, who was bound in equity and good conscience to hold the same for the benefit of this respondent (who was endorser on a bill of exchange for the sum of $4,120, and who endorsed the same merely for the accommodation of said J. & W. Mahard, and which bill was then and is now held by the Ohio Life Insurance and Trust Company) and the holders of the notes and bills mentioned and secured in and by said mortgage.

And respondent has been further informed, and believes the fact to be, the said Andrew Johnson, feeling himself hopelessly ruined by the failure of said J. & W. Mahard, and at the suggestion and earnest solicitation of John S. Buckingham and Mark Buckingham, or one of them, he withdrew said mortgage deed from the recorder's office, and loaned the same to said Buckinghams, or one of them, to look at, who promised to return the same to said Johnson; but the said Buckinghams afterwards fraudulently kept said mortgage, and refused to return it to

to acknowledge satisfaction thereof, which he always refused to do.

Respondent further answering, states that said John Mahard, jr., at the time of respondent's endorsing said note of $10,000, and at the time of drawing said bill for $3,420, and at the time the said President, Directors, and Company of the Lafayette Bank of Cincinnati, discounted said note and draft, or, within a short time thereafter, was the holder of stock in said institution to the value of $4,900, which stock, by the charter or bye-laws of said company, was pledged to said bank, and on which said bank had a valid lien to secure the payment of any debts due by said Mahards to said institution; and he further states, that afterwards, and after said draft had been returned from New Orleans, said John Mahard, at the request of this respondent, in order to secure payment of the amount of said draft, wrote a letter or order to said President, Directors, and Company of the Lafayette Bank of Cincinnati, requesting and directing them to apply as much of the said $4,900 worth of bank stock as was necessary to the payment and discharge of said draft, and admitting therein the said draft was drawn by this respondent for the mere accommodation of the said J. & W. Mahard; and having answered, he prays that his interest in said property, so referred to as above, may be protected by the final decree in the cause.

John McLaughlin, the above defendant, being duly sworn, says the facts set forth in the foregoing answer, so far as stated from his own knowledge, are true, and so far as stated from the information of others, he believes them to be true.

JOHN McLAUGHLIN.

Sworn to and subscribed before me this 16th day of July, 1846.

E. SINGER,
Justice of the Peace.

And afterwards, to wit, on the twenty-first day of July, in the year eighteen hundred and forty-six, came the said complainant, by his solicitors, and filed his replication to the answers of the defendants, in the words and figures following, to wit:

Replication.

CIRCUIT COURT, U. S., *district of Ohio.*

N. C. McLANE, assignee in bankruptcy of John Mahard, jr.,
vs.
The Lafayette Bank of Cincinnati et al. } In chancery.

And the said complainant comes and says, that the matters and things set forth in his bill, and amended and supplemental bill of complaint, are true in substance and in matter of fact; and that the matters

and things set forth in the answers of the said respondents contrary thereto, are untrue; and this he is ready to make appear as by this court shall be directed.

WRIGHT & MINER, and
BROWN & McLEAN, *for Compl't.*

And afterwards, to wit, on the twenty-fifth day of July, in the year and at the term last aforesaid of said court, the court made the following order in this case, to wit:

Order of court.

This day came the parties by their counsel, and it being suggested to the court that since the last continuance of this cause John Mahard, sen., one of the defendants, has departed this life, leave is given to the representatives of the said Mahard to come in at any time before the first Monday of September, 1846, and by answer make themselves parties defendant, in the place and stead of the said Mahard, deceased; and it is ordered, that the order heretofore made in this case, suspending, until the further order of this court, the order before entered for the appraisement, subdivision, and sale, be and the same is hereby vacated; and that the assignee and receiver proceed according to the former order of sale to advertise and sell the said several tracts of land in the subdivisions suggested by him and the appraisers as heretofore reported to this court; and in case either of the tracts shall be struck off to the Lafayette Bank, the Franklin Bank, or the Commercial Bank of Cincinnati, or to any person for their use, the master making the sale shall receive from the bank, for whose use such property is struck off, a certificate for the amount of such bids, less five per cent. to be paid in cash to cover costs, &c., which certificate shall bear interest until the rights of the parties in distribution is adjudged by the court, and then to be paid to the person or persons in whom this court shall find the right to be; and the master shall report his proceedings in the premises to the next term. And it is further ordered by consent of counsel, that this case be set for hearing before his honor Judge McLean, at chambers on the third Monday of September, 1846, at 10 o'clock, a. m., without further notice, to be by him decided, on which a decree may be entered as of this term; and for such hearing, sale, and further orders in the case, the case stands continued.

And afterwards, to wit, on the twenty-first day of November, being at the November term of said court, in the year of our Lord eighteen hundred and forty-six, the court entered the following decree in this cause, to wit:

Decree.

This day came the parties by their counsel, and this cause came on to be heard upon the bill, answers, replication, exhibits, and evidence on file, and the arguments of counsel thereon having been heard and

considered by the court do thereupon order and adjudge as follows, that is to say:

1. That the mortgages given by John and William Mahard to John Mahard, senior, to secure him the payment of the annuities named therein, the first dated the 15th of February, 1837, on lot 460, and the other dated the fifth of April, 18—, are valid instruments constituting the first liens on the lot in Cincinnati, number 460, for the sum in arrear on account of said annuities, at the death of said John Mahard, sen., which is to be satisfied to his administrators out of the proceeds of said lot.

2. That the mortgage given by John Mahard, jr., to William McIntire, dated the 22d March, 1832, is a valid lien upon the property covered by it; and that the representatives of the said McIntire have a right to be fully paid out of the proceeds of the sale of said mortgaged property.

3. That the mortgage of John Mahard, jr., to the Franklin Bank, dated the 3d of April, 1841, and recorded the 18th of October, 1841, on lots 404 and 460, in Cincinnati, is a valid instrument from the 18th of October, 1841, the date of the record thereof, to secure the debt described in it, and is a lien of that date, to be satisfied out of the proceeds of said lots after the liens of previous date are satisfied; but it being made to appear that the lot No. 404 has been sold since the date of said mortgage, by agreement of John Mahard, jr., and the said bank, and that of the purchase money, the sum of $7,297 33, was received by said bank, and a release of said lot thereupon given to the purchaser, he paying the purchase money to John S. Buckingham, a junior mortgagee on the same lot; the said sum of $7,297 33 is to be credited by the Franklin Bank, of the date of the arrangement on the debt of John Mahard, jr., secured by her mortgage.

And it being also made to appear that the said Franklin Bank held 20 shares of the stock of the bank, held for its own benefit after the judgment of one Trow against John Mahard, sen., and John Mahard, jr., which said judgment has since been satisfied by John Mahard, sen., one of the parties against whom it was rendered, who is without right to be subrogated on that account to the interest which was in John Mahard, jr., on that account; the said twenty shares of stock, at the par value thereof, are to be credited by the bank to the debt due the bank, covered by the mortgage as of the 8th of March, 1842, when the said stock was received by her to be so credited when the Trow judgment was satisfied.

4. That the mortgage from John Mahard, jr., to the Lafayette Bank, dated the 7th December, 1841, and recorded the 13th January, 1842, is a valid instrument to secure the debts therein named, amounting to $15,000, on the property described in the mortgage in two notes, one endorsed by John McLaughlin, the other by Andrew Johnson; and as to the 49 shares of the stock of the Lafayette Bank, assigned to her cashier as collateral security for the payment of the first instalment of the debt due the bank, and secured by the mortgage, which was after-

wards conditionally transferr[illegible] the [illegible]dant, Jo[illegible]ingham, the court is of opinion that the said transfer to the said Buckingham having been made within two months before Mahard filed his petition for discharge under the Bankrupt law, and in contemplation of bankruptcy, is void, and the same is set aside; and inasmuch as the court is not now fully advised what application shall be made of said stock, the questions relating thereto, between the complainant and the said bank is reserved for further decision, after the proceeds of the property mortgaged to said bank shall be ascertained; and as to the claim set up by the said Lafayette Bank, that the mortgage of Mahard given to Andrew Johnson to indemnify him against certain endorsements, shall enure to the benefit of this bank, the court is of opinion that it cannot be allowed, either in favor of the bank or of McLaughlin, the endorser on the notes of the bank.

5. That the judgment recovered by the trustees of the Bank of the United States is a good and valid lien upon the real estate of John Mahard, jr., from the date of its rendition in April, 1841, in the superior court of Cincinnati, subject to prior incumbrances.

6. The mortgage of John Mahard, jr., to the Northern Bank of Kentucky, upon the real estate in Kentucky, was a valid lien upon said real estate, and this court will not interfere with the judicial proceedings of the courts in that State under which the property has passed to the possession and enjoyment of said bank. But the mortgage on the personal property of the said John Mahard, jr., dated the 18th March, 1842, given to Andrew Johnson, and by him assigned to said bank, is null and void, as against the assignee of the said Mahard, acting for his general creditors under the Bankrupt law and the laws of Ohio, and the same is set aside.

7. The money remaining in the hands of John C. Avery, late sheriff, arising from the sale of said personal property, is held in trust for the complainant, and the said Avery is hereby ordered to pay over the same, with the interest accumulated thereon, to the order of the complainant; and upon so doing the bill, in this case, as it regards him, shall stand dismissed without costs, and the said Northern Bank of Kentucky and the said Buckingham are perpetually enjoined from prosecuting him any further in any way on account of said sum.

8 The judgment in favor of the Commercial Bank of Cincinnati, against John Mahard, jun'r, and William Mahard, and John McLaughlin, and Andrew Johnson, was for the debt of said Mahards, though recovered after the assignee in bankruptcy was appointed, and not binding on him; yet, inasmuch as the payment of the debt for which this judgment was rendered was secured by the mortgage executed by John Mahard, jun'r, to Andrew Johnson, on lot 460, dated the 16th day of February, 1842, the court find that it enured to the benefit of the said bank as the creditor on said debt, and may be resorted to before they exhaust or resort to the property of the securities, Johnson and McLaughlin, upon said debt. And the court being satisfied that the entry of satisfaction on said mortgage, at the instance of J. S. Buckingham,

rights of [illegible] of said McLaughlin, do vacate the said satisfaction, and reinstate said mortgage to the extent of enabling said bank to avail itself of the lien thereby created for any debt due to it secured thereby to said endorsers, and subject to any prior liens thereon.

9. That the mortgage given by John Mahard, jun'r, to Mark Buckingham, dated the 21st of February, 1842, on said lots 404 and 460, to secure him against the payment of two notes made to Ferris, and dated the 14th December, 1838, which it is alleged the said Buckingham ought not to pay; and also the mortgage of John Mahard, jun'r, to Mark and John S. Buckingham, of the same date, on the same lots, to secure the payment of two notes—one for $7,244 37, made by J. & W. Mahard, and the other made by the said Mahards and the said Buckinghams, on the 27th November, 1838, to one Jewett, for $2,120, at 6 months from the date, and which it is alleged the said Buckinghams ought not to pay, are valid liens upon said lots, subject to prior incumbrances, to the extent of any just claim which the said Buckinghams may prove before the master, under said mortgage, against the said Mahards, and also held to account for the balance paid them out of the proceeds of the sale to Dyer of the lot 404.

10. That the judgments against J. & W. Mahard, recovered upon confession by John S. Buckingham, under a power of attorney in the supreme court of the State of Ohio, in the county of Hamilton, on the 8th day of April, 1842, was, in the opinion of the court, upon an authority executed by the Mahards in contemplation of bankruptcy, and designed to prefer the said Buckingham to the other creditors of said Mahard, and is therefore utterly void and of no effect, and all the proceedings had thereon are also void and without effect; and the said Buckingham is perpetually enjoined from further proceeding thereon in any way whatever. And the transfer of 49 shares of stock in the Lafayette Bank having been transferred by said Mahard in contemplation of bankruptcy, and with the same design as the said judgments were confessed, are also declared utterly void and of no effect.

11. The bill, as it regards the defendants, George Milne & Co., Trow, Bodman, Dyer, and Gerrard, is dismissed, it appearing that Milne & Co., have been fully paid the amount due them, and the other parties having no further interest in the subjects of this suit. And inasmuch as the court is not now fully advised of the precise amounts of the several claims to be adjusted in this case, or of the dates and priorities in regard to the several liens settled by the foregoing decree, that Edward D. Mansfield, a master of this court, is hereby ordered to report to the next term of this court the exact amount, principal and interest, of each of the aforesaid claims, showing the date of their several liens upon each parcel of the real estate of said bankrupt, and in the execution of this order, he may demand and receive from the several parties full statements of their accounts, with the evidence in support of the same, may inspect the books of any of the parties relat-

ing to the same, and examine [illegible] if he [illegible], on oath touching their respective claims.

And the assignee, N. C. McLean, is ordered to proceed to sell the said several tracts of land at public sale; and in executing the order heretofore made for that purpose, he may, if he shall deem it for the benefit of the parties interested, and calculated to increase the sum for which sales may be effected, subdivide the same, and in such case may cause the tracts subdivided to be re-appraised; and if he shall think it will increase the sales, so arrange the terms of sale as to require only one-third of the purchase money in hand, and give credit for the residue, to be paid with interest in two equal annual payments, to be secured by mortgage on the premises. He may also allow the bid of any of the lien holders to the amount of their claims, if they desire it, in such way as not to prejudice the priorities herein settled. He will fully report his proceedings to the next term of this court, and for the coming in of the reports, and for further proceedings, this cause stands continued.

And afterwards, to wit, on the twenty-first day of November, being in the year and at the term last aforesaid of said court, "came the said Mark Buckingham and John S. Buckingham, and pray an appeal to the Supreme Court of the United States from the decree made in this cause, so far as the same affects their rights and claims, which appeal is allowed; and the court certify that the amount in controversy in which the said John S. and Mark Buckingham are interested, exceeds two thousand dollars; said appeal is allowed on their giving bond to the satisfaction of the clerk in the sum of two thousand dollars.

And afterwards, to wit, on the twenty-third day of November, in the year and at the term last aforesaid of said court, "came the President, Directors, and Company of the Northern Bank of Kentucky, and Andrew Johnson, and leave is given them to file a petition for re-hearing in this cause, which is filed accordingly; and the matters arising thereon are reserved for hearing at the next term, to which time this cause is continued.

The following is the petition for rehearing above referred to, to wit:

To the honorable judges of the circuit court of the United States, for the seventh circuit and district of Ohio: Your petitioners, the President, Directors, and Company of the Northern Bank of Kentucky, and Andrew Johnson, defendants, in the case of Nathaniel C. McLean, assignee of John Mahard, jr., vs. the President, Directors, and Company of the Lafayette Bank and others, respectfully represent, that they are greatly prejudiced by so much of the decree of your honors in said case as relates to the mortgage on personal property executed and delivered by said Mahard, jr., to said Johnson, and by said Johnson subsequently transferred to said bank.

Your petitioners represent, that much of the evidence on which the part of said decree now complained of was based, is that of interested witnesses, which ought to be wholly excluded; and that the said mort-

gage was executed without the knowledge of said Johnson, but was delivered to him at the time of the execution thereof, and was relied upon by him as a valid security for the purposes therein mentioned. Your petitioners would further represent, that at the time of the execution and delivery of said mortgage, neither of your petitioners had any knowledge whatever of the insolvency of said Mahard, jr., or that he contemplated bankruptcy; that said Johnson never considered said mortgage as held by him for the benefit of any other creditors than said Northern Bank and himself; though believing said Mahard to be solvent, he was willing that he should sell, and apply in payment of debts such portions of said property as he might judge best; always, however, first obtaining the approbation and consent of said Johnson. Your petitioners further represent, that there is a balance exceeding five thousand dollars due to said Northern Bank on the bills secured by said mortgage, all of which your petitioner Johnson may be made liable to pay in case he shall be deprived of the benefit of said mortgaged property, and consequently of the conditional agreement for release given him by said bank. And your petitioners further represent, that after said Johnson transferred said mortgage to said bank, the said property was in the custody of said bank by Mahard as her agent, said Mahard having then no or little means of taking care of said property except such as were furnished by said bank, and no part of the sums expended by said bank has ever been reimbursed to it.

Your petitioners would finally represent, that they have both acted with the most perfect good faith in reference to said mortgage, and are entitled to the benefit thereof; and that said decree, which is based entirely, not on the testimony actually taken, but on an abstract thereof made by the counsel for the complainant, ought to be opened. Wherefore, your petitioners pray for rehearing of the matters relating to said mortgage, and that leave to take further testimony may be given, and that the personal property mortgaged as aforesaid may be decreed to said Northern Bank in part payment of the bills secured thereby, and in release of said Johnson.

S. P. CHASE,
For the Northern Bank.
CHARLES FOX, by S. P. C.,
For Andrew Johnson.

And this cause was continued.

And afterwards, to wit, on the 11th day of January, in the year of our Lord one thousand eight hundred and forty-seven, came the said Mark Buckingham, and filed in the clerk's office of said court the following appeal bond, to wit:

Appeal bond.

Know all men by these presents, that we, Mark Buckingham and William N. Robinson, are held and firmly bound unto Nathaniel C.

McLean, assignee in bankruptcy of the effects of [illegible], a bankrupt under the act of Congress, approved [illegible], entitled "an act to establish a uniform system of bankruptcy throughout the United States," in the sum of two thousand dollars; to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators. Sealed with our seals, and dated this 8th day of January, A. D. 1847.

The condition of this obligation is such, that whereas the said Mark Buckingham has taken an appeal from a certain decree rendered in the circuit court of the United States, for the district of Ohio, at the November term thereof, A. D. 1846, in a suit wherein the said Nathaniel C. McLean, assignee as aforesaid, is complainant, and the President Directors, and Company of the Lafayette Bank of Cincinnati, John S. Buckingham and Mark Buckingham and others, were defendants, to the Supreme Court of the United States.

Now, if the said Mark Buckingham and William N. Robinson shall pay the full amount of the condemnation money in said supreme court, and costs in case a decree shall be entered in favor of the appellee, then this obligation shall be void, otherwise to be and remain in full force and virtue in law.

MARK BUCKINGHAM, [L. S.]
WILLIAM N. ROBINSON. [L. S.]

Witness:
ANDREW D. SMALL.

And afterwards, to wit, at the July term of said court, in the year of our Lord one thousand eight hundred and forty-seven, this cause was continued.

And afterwards, to wit, on the ninth day of November, being at the November term of said court, in the year last aforesaid, came Nathaniel C. McLean, esq., assignee and special master in this cause, and produced and filed in court here his report in the words and figures following, to wit:

Report of N. C. McLean, assignee and special master.

To the honorable circuit court of the United States, for the district of Ohio.

N. C. McLEAN, assignee in bankruptcy of the estate of John Mahard, jr.,
vs.
The PRESIDENT, Directors, and Company of the Lafayette Bank et al.

N. C. McLean, assignee and special master in said cause, would respectfully represent to said court, that agreeably to an order or decree of said court, made at the November term, A. D. 1846, for the sale of certain real estate therein described; also an order of said court, made

...decrees or orders are hereby referred to, and made part of his report,) he, the said assignee and special master, appraised and advertised for sale said real estate, to be sold on the fourth day of January, A. D. 1847, at 10 o'clock, a. m., of said day, at the door of the court-house, in the city of Cincinnati, in the county of Hamilton, in said district. Having advertised said real estate in the Cincinnati Gazette, a newspaper of general circulation in said city of Cincinnati, and county of Hamilton, for sale, for more than thirty days in said paper, and having given due notice of the time and place of said sale, he, the said assignee and special master, proceeded on said day, to wit, the fourth day of January, A. D. 1847, at 10 o'clock, a. m., of said day, to offer said real estate at public sale, at the door of the court-house in Cincinnati, Hamilton county aforesaid, and then and there, at public outcry, struck off to John H. Groesbeck, John C. Culbertson, and John Kilgore, the trustees of the Franklin Bank of Cincinnati, the following described real estate, being part of said real estate described in said decrees, to wit: 1st, part of in-lot No. 460, on the original plan of Cincinnati, on the southwest corner of Walnut and Water streets, fronting on the south side of Water street seventy (70) feet, and extending back southwardly one hundred (100) feet to the wharf; bounded east by Walnut street, south by the wharf or river landing, west by Charles B. Dyer's lot, (formerly Robert Stewart's,) and north by Water street, excepting about twenty-three feet on Water street by one hundred (100) feet deep, formerly conveyed by John Mahard, jr., to William Mahard, for the sum of eleven thousand three hundred and thirty-three dollars and thirty-four cents, ($11,333 34,) it being two-thirds of the appraised value of said lot or parcel of land, and the trustees of the Franklin Bank of Cincinnati being the highest and best bidders for said premises, and the purchasers thereof.

Also, at time and place aforesaid, struck off at public outcry, to the trustees of the Franklin Bank of Cincinnati, the following described real estate, being part of the real estate described in said orders or decrees, to wit:

2d. All that wharf or landing, and lot of land on the Ohio river adjoining south of the foregoing, being the south part of said lot No. 460, bounded east by Walnut street, and south by the Ohio river, about one hundred (100) feet, west by lot No. 459, and bounded north one hundred (100) feet by the foregoing lot, and by said Dyer's lot, for the sum of eight thousand ($8,000) dollars, it being two-thirds of the appraised value of said lot or parcel of land, and the trustees of the Franklin Bank of Cincinnati being the highest and best bidders for said premises, and the purchasers thereof.

Also, at time and place aforesaid, struck off and sold at public outcry, to the President, Directors, and Company of the Lafayette Bank of Cincinnati, the following described real estate, being part of said real estate described in said orders or decrees, to wit:

3d. All that tract of land in section 23, township 4, and fractional range 2, in the Miami purchase, Hamilton county, Ohio, as described

in the decrees of said court as a[illegible] and in th[illegible] Mahard, jr., recorded in Ham[illegible] co[illegible] records, [illegible] 437, containing one hundred and twenty (120) acres, (except ten (10) acres sold to S. W. Phelps, off the east end of said tract,) for the sum of three thousand six hundred and sixty-seven dollars, ($3,667 00,) it being more than two-thirds of the appraised value of said lot or parcel of land, and the President, Directors, and Company of the Lafayette Bank of Cincinnati being the highest and best bidders for said premises, and the purchasers thereof.

Also, at time and place aforesaid, at public outcry, struck off and sold to the said President, Directors, & Company of the Lafayette Bank of Cincinnati the following described real estate, being parts of said real estate described in said orders or decrees, to wit:

4th. All that other tract in same section, township, and fractional range, being the southwest quarter of said section, (except the forfeit in the northeast corner, and also the lot of nine acres and seventy-three square roods, conveyed by William McIntire to A. Martin, by deed recorded in said records, containing after said reservation one hundred and twenty-three (123) acres, three roods, and twenty-one and a half perches, same conveyed to said John Mahard, jr., by Wm. McIntire, by deed recorded on said records, book No. 41, page 478.

Also all that tract of one acre, one rood, and four perches, adjoining the last described tract conveyed to said John Mahard, jr., by said Martin, by deed recorded in said records, book 50, page 456.

Also that other tract known as the forfeiture of the northwest quarter of section No. 21, in said township and fractional range, being a tract of twenty-six and two-thirds acres in the northeast corner of said quarter section, laid off in a regular square, conveyed by B. Jones to said John Mahard, jr., by deed recorded in book No. 58, page 543 of said record. The three last described tracts, with the improvements, for the sum of nine thousand three hundred and thirty-three $\frac{34}{100}$ dollars, ($9,333 34,) it being two-thirds of the appraised value of said lots or parcels of land, and the President, Directors, and Company of the Lafayette Bank being the highest and best bidders for said premises, and the purchasers thereof.

Also, at time and place aforesaid, at public outcry, struck off and sold to the same President, Directors, and Company of the Lafayette Bank, the following described real estate, being part of said real estate described in said orders or decrees, to wit:

5th. All that other tract in the same township and fractional range, known as the forfeiture of quarter section eighteen, (18,) in the plat of quarter sections lying in a regular square in the northeast corner of said quarter section, and containing twenty-six and two-thirds (26⅔) acres; same conveyed to said John Mahard, jr., by Spicer Ferguson, by deed recorded in book No. 49, page 404, of said records, and same occupied by said Ferguson, and afterwards by said Mahard, for the sum of eight hundred and sixty-seven (867) dollars, it being more than two-thirds of the appraised value of said lot or parcel of land; and the President,

...y of the ...ette Bank being the highest and ... premises, ... the purchasers thereof.

And said assignee and special master would further represent, that in making said sales he was governed in all respects by the laws of the State of Ohio, regulating sales of real estate in Ohio on judgments and executions at law, agreeably to said decrees. And that the subdivision as made by the appraisers under the decree of July term, 1844, and as sold under and by said assignee and special master, was, in his opinion and that of the appraisers, the most judicious division of said property for sale. And that the whole proceeds of said sales amount to the sum of thirty-three thousand two hundred and $\frac{68}{100}$ ($33,200 $\frac{68}{100}$) dollars, to wit:

Nineteen thousand three hundred and thirty-three and $\frac{34}{100}$ (19,333 $\frac{34}{100}$) dollars, in the hands of the trustees of Franklin Bank, and thirteen thousand eight hundred and sixty-seven $\frac{34}{100}$ (13,867 $\frac{34}{100}$) in the hands of the said Lafayette Bank.

The whole proceeds of said sales for distribution by said assignee, amounting (after deducting expenses of sale, &c., $982 $\frac{76}{100}$) to thirty-two thousand two hundred and seventeen and $\frac{92}{100}$ (32,217 $\frac{92}{100}$) dollars.

And the said assignee and special master would therefore pray that said sale may be confirmed, and his said expenses (as hereto annexed) allowed. And that an order of distribution may be entered for said sum of $32,217 $\frac{92}{100}$, and any additional sum for interest from the time of said sale, as said court may direct. The terms of sale were one-third cash, one-third in one year, and one-third in two years, agreeably to the terms of advertisement hereto annexed, and the decree of said court.

N. C. McLEAN,
Assignee and special master.

Expenses and charges.

Expenses of an attempt to sell in December, 1844, as allowed by said court	$76 00
Paid for advertising last sale Gazette	45 75
Commission on sale 2½ per cent.	831 01
Making report of sales and attending to same at Columbus	30 00
	$982 76

The advertisement referred to in said report, and annexed thereto, is in the words and figures following, to wit:

Assignee and special master's sale of real estate.—Agreeably to an order of the circuit court of the United States for the district of Ohio, made at the November term, 1846, I shall offer for sale, at the door of the court-house, Hamilton county, Ohio, in the city of Cincinnati, on Monday, the 4th day of January, 1847, at 10 o'clock, a. m., the following described real estate, viz:

1st. All that part of in-lot No. [illegible] on the [illegible] Cincinnati, on the southwest corner of Walnut and Wa[illegible] fronting on the south side of Water street, seventy feet, and extending back southerly one hundred, *set* to the wharf; bounded east by Walnut street, south by the wharf or river landing, west by Chas. B. Dyer's lot, formerly Robert Stewart's, and north by Water street, excepting about twenty-three feet on Water street, by one hundred feet deep, formerly conveyed by John Mahard, jr., to William Mahard. Appraised at $17,000.

2d. Also all that wharf or landing, and lot of land in Cincinnati, on the Ohio river, adjoining south of the foregoing, the south part of lot No. 460, bounded east by Walnut street, and south by the Ohio river, about one hundred feet, west by lot No. 459, and bounded north one hundred feet by the foregoing lot and by said Dyer's lot. Appraised at $12,000.

3d. Also all that tract of land in section 22, township 4, and fractional range 2, in the Miami purchase, in Hamilton county, Ohio, to be laid off the north side of the southeast quarter of said section, by a line running parallel with the north boundary of said quarter section, from east to west, at such a distance south from the said north boundary, as to include one hundred and twenty (120) acres, except ten (10) acres sold to S. W. Phelps off the east end of said tract; which parcel of land was deeded to the said John Mahard, jr., by deed recorded in book No 58, page 437, of the records of Hamilton county, Ohio. Appraised at $5,500.

4th. Also all that other tract, in the same section, township, and fractional range, being the southwest quarter of said section, except the forfeit in the northeast corner, and also the lot of nine acres and seventy-three square roods, conveyed by William McIntire to A. Martin, by deed recorded in said record, containing, after said reservation, one hundred and twenty-three acres, three roods, and twenty-one and a half perches; conveyed to said John Mahard, jr., by said McIntire, by deed recorded in book No. 41, page 478, of said record.

Also all that tract of one acre, one rood, and four perches, adjoining the last described tract, conveyed to the said John Mahard, jr., by said Martin, by deed recorded in book No. 50, page 456, of said records.

Also that other tract, known as the forfeiture of the northwest quarter of section No. 21, in same township and fractional range, being a tract of twenty-six and two-third acres, in the northeast corner of said quarter section, laid off in a regular square, conveyed to the said John Mahard, jr., by B. Jones, by deed recorded in book No. 58, page 543, of said record. The three last described tracts, with their improvements, appraised at $14,000.

5th. Also all that other tract, in the same township and fractional range, known as the forfeiture of quarter section eighteen, (18,) in the plot of quarter sections lying in a regular square in the northeast corner of said quarter section, and containing twenty-six and two-third acres, conveyed to the said John Mahard, jr., by Spicer Ferguson, by deed

49, page [illegible] of said records. Appraised [illegible]

Terms of sale—one third cash, the remainder in one and two years, with interest, secured by mortgage on the premises.

N. C. McLEAN,
Assignee and Special Master.

On the lot first described in the above advertisement there is a large brick warehouse; and on the fourth, there is a large brick dwelling house and other valuable improvements. For further particulars inquire of N. C. McLean, office of Brown & McLean, over the old post office.

STATE OF OHIO, *Hamilton county, ss.*

S. S. L'Hommedieu, one of the proprietors of the Cincinnati Gazette, a newspaper printed in the county of Hamilton aforesaid, and there in general circulation, being duly sworn, says, the advertisement hereto annexed was published thirty days in said newspaper, next preceding the 4th day of January, 1847.

S. S. L'HOMMEDIEU.

Charge	- -	$45 75
Affidavit	- -	25
		$46 00

Sworn to and subscribed before me, this 22d day of October, 1847.

EBENEZER HARRISON,
Justice of the peace.

And afterwards, to wit, on the eighteenth day of November, in the year, and at the term of said court last mentioned, came Edward D. Mansfield, the master herein before appointed, and filed in said court his report in the words and figures following, to wit:

Circuit court of the United States, for the district of Ohio, November term, 1847.

NATHANIEL C. McLEAN, assignee in bankruptcy of John Mahard, jr., vs. The PRESIDENT, Directors, and Company of the Lafayette Bank of Cincinnati et alias. } In chancery.

Edward D. Mansfield, master in chancery, to whom certain matters of fact touching the issues of this cause were referred, comes into court and respectfully reports: That the order directed to him requires that he should report "the exact amount, principal, and interest, of each of the aforesaid claims, (there mentioned in the order,) showing the date of the several liens upon each parcel of the real estate of said bankrupt, and in the execution of said order may demand and receive from

several parties full statements of their accounts [illegible] in support of the same, &c."

In pursuance of said decree, the master proceeded to take such testimony as he deemed necessary to determine and authenticate the several amounts supposed to be due, and whether any credits, not heretofore proved, should be justly set off against. This was obtained in a satisfactory manner, except in one instance; the Messrs. Buckingham, by their attorney, Wm. Correy, esq., refused to give additional testimony. The reason given was, that this suit had been appealed to the Supreme Court of the United States, and they were unwilling to take any step which would acknowledge the further proceedings of the circuit court. The only information of the claim of the Messrs. Buckingham, therefore, is derived from the papers in the suit.

1. As to the dates of the several liens upon each parcel of the real estate, the following is the order of said dates:

The first lien in the order of time is the mortgage given by John Mahard, jr., on two parcels of land, one of one hundred and twenty-three acres, and the other of nine acres, in the township of Columbia, Hamilton county, Ohio, dated and recorded the 22d day of March, 1832, and given to William McIntire to secure the purchase money.

The second lien is that of a mortgage given by John Mahard, jun., on lot 460, in Cincinnati, to John Mahard, senior, dated the 23d of March, 1837, and given to secure the annual payment of seven hundred dollars per annum annuity, during the natural life of said John Mahard, senior.

The third lien is that of a judgment rendered in favor of the Bank of the United States, and since assigned to the trustees of said bank, obtained at the July term of the superior court of Cincinnati, 1841, against John Mahard, jr., and his securities, McLaughlin and William Mahard.

The fourth lien is that of the mortgage of the Franklin Bank on lots 404 and 460, in Cincinnati, recorded on the 18th of October, 1841, and made by John Mahard, jr., to secure his debt to that bank.

The fifth lien is that of the mortgage to the Lafayette Bank, recorded on the 13th of January, 1842, on the land previously mortgaged to McIntyre; also on a piece conveyed to J. Mahard, jr., by C. Fox; also a small piece conveyed to said Mahard by Alexander Martin; also a tract conveyed to said Mahard by Spicer Ferguson; also another tract conveyed *by* to him by B. Jones; the said tracts being mortgaged to said bank to secure the payment of a large debt.

The sixth lien is that of the mortgage executed by John Mahard, jr., to Andrew Johnson, on lot 460, dated the 16th of February, 1842, and which has been decreed to enure to the benefit of the Commercial Bank of Cincinnati.

The seventh lien is that of the mortgage of John Mahard, jr., to Mark Buckingham, dated the 21st of February, 1842, on lots 404 and 460, in Cincinnati, to secure said Buckingham against certain notes; and also the mortgage of John Mahard, jr., to Mark Buckingham and

the same [illegible] and on the same lots, to secure the payment of [illegible] these [illegible] mentioned.

In addition to these several claims, it was proved before the master, by William Ernst, teller of the Northern Bank of Kentucky, in Covington, that said bank had advanced John Mahard, jr., for the purpose of feeding cattle, mortgaged while under order of sale, forty dollars, to prevent loss on said cattle. This item, the master thinks, is justly chargeable as a part of the necessary expenses attending the legal proceedings, and should be charged to and paid out of the costs of the legal process.

2. As to the "amount, principal and interest," of these several liens, the following are the facts:

1. The first lien is that of James Clark, executor of William McIntyre, deceased, derived from the notes secured by the mortgage of the 22d of March, 1832, and the amount stands thus:

Note drawn for - - - - - - -	$400 00
Interest from the first day of April, 1840, (to which time interest was paid,) to the 8th day of November, 1847, 7 years, 7 months, and 7 days - - - - -	182 46
Note for - - - - - - - -	400 00
Interest from the first day of April, 1841, (to which time interest was paid,) to the 8th day of November, 1847, 6 years, 7 months, and 7 days - - - - -	158 46
Sum due - - - - - - -	$1,140 92

This sum is to be paid from the proceeds of the two tracts of one hundred and twenty-three and nine acres each, included in the mortgage of the 22d of March, 1832. The three papers, marked A, B, and C, are the authentication of this claim.

2. Of the second lien, given by a mortgage on lot 460 to secure an annuity to John Mahard, senior, sufficient evidence has been exhibited before the master to prove that said annuity has terminated by the death of said John Mahard, sr., and *and* the remainder of the annuity due has been fully paid to his executors. The said lien has therefore ceased, and there is nothing chargeable on the bankrupt estate to that account.

3. In reference to the judgment of the United States, which is the third lien in date, and the second in fact, some doubt has been expressed whether the penalty which accrued on the affirmance of the judgment in the supreme court is also a part of the original judgment in the court below, so as to constitute a lien, in preference to the subsequent mortgages; the facts are these: The Bank of the United States obtained its judgment at the July term, 1841, of the superior court; on the 18th October, 1841, the Franklin Bank recorded its mortgage; in April, 1842, the judgment below was affirmed in the supreme court, with the penalty allowed, by statute affixed. If the doctrine of relations obtains in this case, the penalty constitutes a part of the original

judgment; so also the penalty w[illegible]nally in[illegible] of appeal was entered, and that [illegible] for the appeal itself made it certain the penalty would accrue if the judgment was not changed; the master therefore thinks the penalty should be considered a part of the judgment lien. The account thus stated stands thus:

April 4th, 1842, judgment damages - - - - -	$2,837 84
Penalty - - - - - - - - - - - -	141 89
Amount due on judgment - - - - - - - -	2,979 73
Interest on the same from 4th April, 1842 to 8th November, 1847, 5 years, 7 months, and 4 days - -	974 81
Sum due on this judgment - - - - - - -	3,953, 54

To this must be added the costs court, as entered by the clerk of the superior court.

Another question here arises, as between the subsequent lien holders, out of what particular fund shall this judgment be paid?

This judgment was a lien on all the real estate of John Mahard, jr. Next to that comes the mortgage of the Franklin Bank on lots 404 and 460; next to that, the mortgage of the Lafayette Bank; next, that of the Commercial Bank; and, lastly, that of the Buckinghams.

It is contended by the intermediate lien holders, viz., the Lafayette and Commercial Banks, that the payment of three thousand dollars by Dyer, to the junior mortgagees, the Buckinghams, in consequence of the release given by the Franklin Bank, should enure to their benefit, inasmuch as their mortgages were prior to that of the Buckinghams. In that event, lot 404 would yet be liable for the payment of the judgment held by the trustees of the United States Bank, or the Franklin Bank, which stands in its place. This question, however, the master regards as strictly one of law and not of fact; he submits it, therefore, to the decision of the court.

4. The 4th lien, that of the Franklin Bank, is on lots 404 and 460; the account, principal and interest, with the credits, stands as follows:

Dr. Bill of exchange in favor of the Franklin Bank, due by John Mahard, jr., August 2nd, 1841 -	$5,205 00
Interest on the same to February 17th, 1842 -	169 16
Bill do. do. due October 18th, 1841 -	2,005 50
Interest on the same to February 17th, 1842 -	40 11
Bill do. do. due November 5th, 1841 -	1,310 00
Interest on the same to the 17th of February, 1842 -	20 56
Bill do. do. due November 27th, 1841 -	6,150 00
Interest on the same to the 17th February, 1842, -	62 09
Bills do. do. due December, 17th 1841, -	5,710 00
Interest on the same to 17th February, 1842, -	57 10

	Febru[illegible]9th, 1842, -	$[illegible]5,242 08
	to 17th February, 1842, -	1 64
	Due on the 17th of February, 1842, - -	$21,893 17
Cr.	February 17th, 1842. Cash - - -	2,750 00
		$19,143 17
Dr.	Interest on this sum to 8th of March, 1842, -	69 31
	Expenses paid March 2d, 1842, - - -	655 00
	Due on the 8th of March, 1842, - - -	$19,867 48
Cr.	Cash from sales 8th of March, 1842, - -	7,297 00
		$12,570 15
	20 shares of stock taken at par - - -	2,000 00
		$10,570 15
Dr.	Interest on this sum to the 8th of November, 1847,	3,593 83
	Bill of exchange due March 12th, 1842, - -	805 50
	Interest on the same to the 8th day of Nov., 1847,	269 84
	Bill do. do. due March 19th, 1842, -	1,825 00
	Interest on the same to the 8th day of Nov., 1847,	617 45
	Note due 16th April, 1842, - - -	695 00
	Interest on the same to November 8th, 1847, -	231 88
	Note due April 23d, 1842, - - - -	556 00
	Interest on the same to the 8th November, 1847, -	184 96
	Note due May 4th, 1842, - - - -	862 00
	Interest on the same to the 8th of November, 1847,	285 03
	Note due May 10th, 1842, - - - -	313 56
	Interest on the same to the 8th of November, 1847,	103 30
	Note due July 9th, 1842, - - - -	283 00
	Interest on the same to the 8th November, 1847, -	90 51
		$21,287 01
	Add the statute damages on the inland bills of exchange, amounting to 6 per cent. on $24,148 08	1,448 88
	Total sum due on the 8th November, 1847, -	$22,735 89

As the damages on bills of exchange and penalty, and have not in this instance, been reduced to judgment, the master presumes they can bear no interest.

The amount due the Franklin Bank is payable out of the proceeds of lots 404 and 460.

5. The 5th lien is that of the Lafayette Bank. The account stands thus:

Dr. Two notes, one for $10,000 [illegible] one other [illegible],000,	
due 15th March, 1842, - - - - -	$15,000 00
Interest on the same to the 8th November, 1847, -	5,085 00
Total due on the mortgage - - - -	$20,085 00

This sum is payable out of the proceeds of the land described in the mortgage recorded 13th January, 1842.

The Lafayette Bank also holds three other claims:

Dr. Bill of exchange due 16th February, 1842, -	$3,420 00
Interest on the same to the 8th November, 1847, -	1,174 83
	$4,594 83
Damages - - - - - -	205 20
Note due 10th of May, 1842, - - -	163 00
Interest to the 8th November, 1847, - -	63 57
Note due May 17th, 1842, - - - -	162 00
Interest to the 8th November, 1847, - -	63 47
Due on the 8th November, 1847, - - -	$5,252 07

These last claims are alleged, by the Lafayette Bank, to be secured by 49 shares of its stock, a decision upon which claim was reserved by the court, at the session at which the order was directed to the master.

6. The lien of the Commercial Bank, by the mortgage of Johnson, is understood to be terminated, by the payment of its debts, by one of the securities or endorsers of Mahard. The bank, therefore, presented no claims before the master.

7. The last lien is that of the Buckinghams, but of the specific sums due on their claims the master has no evidence, for the reasons already stated.

The summary of these several accounts, as they have been proved, are as follows:

1. The claim of James Clark, executor of William McIntyre - - - - - -	$1,140 92
2. The judgment of the trustees of the United States Bank - - - - - - - This is a lien on all the lands of Mahard.	3,953 54
3. The claim of the Franklin Bank, secured by the mortgage of lots 404 and 460; recorded 18th October, 1841	22,735 89
4. The claim of the Lafayette Bank, secured by the mortgage on the farm; recorded 13th January, 1842 -	20,085 00
5. The claim of the Buckinghams, to be ascertained by what they may prove to the assignee, should there be any more assets to distribute; the claim of Mahard, sr., is paid, and the claim of the Commercial Bank is also stated to be paid by a collateral security - -	

6. The claim of the Lafayette Bank, which is alleged to be secured by the transfer of 41 shares of its stock, amounts to - - - - - - - 5,252 07

All of these amounts are calculated down to the first day of the present term of the *the* circuit court. The small amounts claimed by the Northern Bank, should be charged to the account of costs, as on account of legal proceedings.

All which is respectfully reported to *to* the court by—

EDWARD D. MANSFIELD,
Master in chancery.

Master's fees $50.

And afterwards, to wit, on the 20th day of November, in the year and at the term of said court last mentioned, came the President, Directors, and Company of the Lafayette Bank of Cincinnati, by their solicitor, and filed in said court their exceptions to the report of said master, Mansfield, which said exceptions are in the words and figures following, to wit:

N. C. McLean, assignee of John Mahard, jr., a bankrupt,
vs.
The President, Directors, and Company of the Lafayette Bank, et al.
} In chancery.

And now come the said the President, Directors, and Company of the Lafayette Bank, by their solicitor, and except to the report of Edward D. Mansfield, special master filed in this cause, and for causes of exception shew:

1st. The said master has allowed to the bank of the United States' trustees, as part of their judgment of July term, 1841, and a lien from that date, the sum of $141 89, which was a penalty adjudged against said Mahard on appeal, at the April term, 1842, and formed no part of the original judgment; and has also allowed, as part of said original judgment, and as constituting a lien from the rendition thereof, the costs on said judgment on appeal.

2d. The said master has allowed to the said Franklin Bank trustees, interest on their debt to the 8th November, 1847, whereas the said bank became the purchaser of the real estate subject to her claims on the 4th January, 1847, from which date interest on the debt to the amount of the purchase money should cease.

3d. The said master has omitted to decide that the judgment of the Bank of the United States should be paid out of the property mortgaged to the Franklin Bank, but has referred said question to the decision of the court.

S. P. CHASE,
For Lafayette Bank.

And afterwards, to wit, on the twentieth day of November, in the

year and at the term of said court, last mentioned, the following decree was made and entered by said court in this cause, to wit:

And now, at this term, Nath'l C. McLean, assignee and special master in the above cause, having reported to the court here at this term, that agreeably to an order or decree of this court, made at the November term, A. D. 1846, for the sale of real estate belonging to the estate of the said bankrupt, as well also as in pursuance of another order of this court, in the premises, made at the July term thereof, A. D. 1844, he had advertised the sale of the said real estate in the Cincinnati Gazette, a newspaper printed in Hamilton county, Ohio, and in general circulation therein, more than thirty days next preceding the fourth day of January, A. D. 1847, (he having also prior thereto caused the same to be duly appraised;) and that on the said fourth day of January, A. D. 1847, at 10 o'clock, a. m., he did offer the said premises, so as aforesaid ordered to be sold, at the door of the court-house, in Cincinnati, in said county of Hamilton, being the place named in said advertisement, at public auction And that then and there, John H. Groesbeck, John C. Culbertson, and John Kilgour, trustees of the Franklin Bank of Cincinnati, appeared, and for the following described property, viz:

Part of in-lot number 460, on the original plan of Cincinnati, on the southwest corner of Walnut and Water streets, fronting on the south side of Water street seventy feet, and extending back southwardly, one hundred feet, to the wharf or river landing; bounded east by Walnut street, south by the wharf or river landing, west by Chas. B. Dyer's lot (formerly Robert Stewart's,) and north by Water street, excepting about twenty-three feet on Water street, by one hundred feet deep, (formerly conveyed by John Mahard, jr., to William Mahard,) being part of the premises in said order of sale described; and did then and there bid for said lot, the sum of seven thousand three hundred and thirty-three $\frac{34}{100}$ dollars, which being two-thirds of the appraised value of said lot, and the highest and best bid therefor, the same was then and there, at said bid, struck off to them. And also that, at the same time and place, he had offered for sale the following premises, viz: All that wharf or landing, and lot of land on the Ohio river, adjoining south of the foregoing, being the south part of said lot number four hundred and sixty, bounded east by Walnut street, and south by the Ohio river, about one hundred feet west by lot four hundred and fifty-nine, and bounded north, one hundred feet, by the foregoing lot, and by said Dyer's lot, being also part of the premises described in the said order of sale. And thereupon appeared the said John H. Groesbeck, John C. Culbertson, and John Kilgour, trustees of the Franklin Bank, and bid therefor the sum of eight thousand dollars, which being the highest and best bid therefor, and being two-thirds of the appraised value thereof, the same was then and there struck off to them at the bid aforesaid. And also that at the same time and place, he did offer for sale the following premises, to wit: All that tract of land in section 22, township 4, and fractional range 2, in the Miami purchase, Hamilton county, Ohio, as described in the decree of said court as aforesaid, and in the deed

said John Mahard, jr., and recorded in Hamilton county records, book No. 58, page 437, containing one hundred and twenty (120) acres, (except ten (10) acres sold to S. W. Phelps off the east end of said tract;) and thereupon appeared the President, Directors & Company of the Lafayette Bank of Cincinnati, and bid therefor the sum of three thousand six hundred and sixty-seven (3,667) dollars, it being more than two-thirds the appraised value of the last aforesaid lot or parcel of land; and being the highest and best bid therefor, the said lot or parcel of land was struck off to them at the bid aforesaid.

And also that, at the same time and place, he did offer for sale the three following tracts of land described in said order and decree, to wit:

All that other tract of land in the same section, township, and fractional range as last aforesaid, being the southwest quarter of said section, (except the forfeit in the northeast corner, and also the lot of nine acres and seventy-three square rods, conveyed by William McIntire to A. Martin, by deed recorded in said record,) containing, after said reservation, one hundred and twenty-three (123) acres, three (3) roods, and twenty-one and a half (21½) perches; being the same conveyed to said John Mahard, jr., by William McIntire, by deed recorded on said records, book No. 41, page 478. Also that tract of one (1) acre, one (1) rood, and (4) perches, adjoining the last described tract, conveyed to said John Mahard, jr., by said Martin, by deed recorded in said records, book 50, page 456. Also that other tract known as the forfeiture of the northwest quarter of section No. 21 in said township and fractional range, being a tract of twenty-six and two-thirds (26⅔) acres in the northeast corner of said quarter section, laid off in a regular square, conveyed by B. Jones to said John Mahard, jr., by deed recorded in book No. 58, page 542, of said records.

And thereupon appeared the President, Directors, and Company of the said Lafayette Bank of Cincinnati, and bid for the three last described tracts, with the improvements, the sum of nine thousand three hundred and thirty-three and $\frac{34}{100}$ dollars, ($9,333 $\frac{34}{100}$,) and it being two-thirds of the appraised value of said lots or parcels of land, and the highest and best bid therefor, the same were struck off to them at the bid aforesaid.

Also that, at the time and place aforesaid, he did offer for sale the following described real estate, being part of the said real estate described in said orders and decrees, to wit:

All that other tract of land in the same township and fractional range, known as the forfeiture of quarter section eighteen, (18,) in the plat of quarter sections lying in a regular square in the northeast corner of said quarter section, and containing twenty-six and two-thirds (26⅔) acres; same conveyed to said John Mahard, jr., by Spicer Ferguson, by deed recorded in book No. 49, page 404, of said records, and same occupied by said Ferguson, and afterwards by the said Mahard.

And thereupon appeared the President, Directors, and Company of the said Lafayette Bank of Cincinnati, and bid for the last aforesaid tract the sum of eight hundred and sixty-seven (867) dollars, and it

being more than two thirds the appraised val[illegible] highest and best bid therefor, the said lot or [illegible] off to them at the bid aforesaid.

And thereupon the court here, upon due consideration of the premises, and of the proceedings of the said assignee and special master commissioner herein, do find that all of his proceedings have been regular, according to law, and in pursuance of the decree and order of the court in the premises, and the court do ratify and confirm the said proceedings and the said sale, and do hereby order and decree the special master commissioner to make to the said John H. Groesbeck, John C. Culbertson, and John Kilgour, trustees of the Franklin Bank, purchasers as aforesaid, a deed in fee simple for the several lots or parcels of ground so as aforesaid sold to them.

And the court do further order and decree the said special master commissioner, to make to the said President, Directors, and Company of the Lafayette Bank, of Cincinnati, purchasers as aforesaid, a deed in fee simple for the several lots or parcels of ground so as aforesaid sold to them.

And the court do further order and decree, that the charges, expenses, and fees set forth in the report of the special master commissioner, filed in this court on the 9th of November, 1847, be allowed, and that they be paid out of the purchase money of the above sales.

And the court do further order and decree, that the charge of fifty dollars of Edward D. Mansfield, master commissioner in this case, made for his report to the court here, at this term in this case, be allowed and paid out of the proceeds of the foregoing sales.

And afterwards, to wit, on the twenty-third day of November, in the year and at the term of said court last mentioned, the following order was entered in this cause, to wit: "And the said President, Directors, and Company of the Lafayette Bank of Cincinnati, come and except to the report of E. D. Mansfield, filed in this cause.

1. Because the said master has allowed the penalty and costs adjudged to the Bank of the United States, at the April term, 1842, of the supreme court of Ohio, as part of the judgment rendered in favor of said bank, at the July term, 1841, of the superior court of Cincinnati, and therefore a lien from said July term, 1841."

And afterwards, to wit, on the twenty-fourth day of November, in the year and at the term of said court last mentioned, the following order was made in this cause, to wit: "And now at this term, it appearing to the court that there is a clerical error in entering the order of allowance of appeal at the November term, 1846, in the above cause, in this, that said order does not specify that the bond thereby required was to cover the costs in the cause, though such was the direction and allowance of the court, it is, on motion, ordered that the said entry be amended by adding at the close thereof, 'to secure the payment of all costs which may be adjudged or decreed against the said John S. and Mark Buckingham.'"

And thereupon this cause was continued; and afterwards, to wit, on

this ninth day of July, being at the July term of said court, in the year of our Lord one thousand eight hundred and forty-eight "came the said plaintiff, by his solicitor, and produced and filed in court here the mandate of the Supreme Court of the United States, which is ordered to be entered of record, and is as follows, to wit:"

UNITED STATES OF AMERICA, ss.

The President of the United States of America, to the *the* honorable,
[L. S.] the judges of the circuit court of the United States, for the district of Ohio, greeting:

Whereas, lately, in the circuit court of the United States, for the district of Ohio, before you or some of you, in a cause between Nathaniel C. McLean, assignee, of John Mahard, jr., a bankrupt, and Mark Buckigham, John S. Buckingham, and others, wherein a decree was rendered against the said Mark and John S. Buckingham, whereupon the said Mark and John S. Buckingham prayed an appeal, which was duly allowed by the said circuit court, to remove the said cause to the Supreme Court of the United States, as by the inspection of the certificate of the clerk of said court, under the seal of the said circuit court, which was brought into the Supreme Court of the United States, agreeably to the act of Congress, and the rules of the said Supreme Court, in such case made and provided, fully and at large appears. And whereas, in the present term of December, in the year of our Lord one thousand eight hundred and forty-seven, the said cause came on to be heard before the said Supreme Court, and it appearing that the said appellants have failed to have their cause filed and docketed in conformity to the rules of this court:

It is now ordered and decreed by this court, that this appeal from the circuit court of the United States, for the district of Ohio, be, and the same is hereby, docketed and dismissed with costs, and that the said Nathaniel C. McLean, assignee as aforesaid, recover against the said appellants thirty-three dollars and twelve cents, for their costs herein expended, and have execution therefor, and that this cause be, and the same is hereby, remanded to the said circuit court.

JANUARY 20.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause as, according to right and justice and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and forty-seven.

Costs of Nath'l C. McLean, assignee, &c.

Clerk	- - -	$13 12
Attorney	- - -	20 00
		$33 12

Taxed by WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

And also at the same time last aforesaid, the said complainants filed in court here a certified copy of a certain order made by the Supreme Court of the United States, which is as follows, to wit:

Supreme Court of the United States, December term, 1847.

MARK & JOHN S. BUCKINGHAM, appellants,
vs.
NATHANIEL C. McLEAN. } No. 203.

Mr. Ewing, in behalf of the appellants, moved the court to rescind and annul the order passed by the court the 20th day of January past, docketing and dismissing this appeal under the 43d rule, and for leave to file the transcript of the record now brought here into court, and to docket this appeal; on consideration whereof, and it appearing to the court upon an inspection of the said transcript that there has been the intervention of a term between the return day of the appeal and the present term, (the appeal having been made returnable to the first Monday of December, 1846,) it is thereupon now here ordered by this court, that the said motion be and the same is hereby overruled. March 9th.

I, William Thomas Carroll, clerk of the Supreme Court of the United States, do hereby certify, that the above is a true copy of the order of said court, made in the above entitled case at December term, A. D. 1847; extracted from the minutes of said Supreme Court.

In testimony whereof I hereunto subscribe my name and affix the [L. S.] seal of said court, at the city of Washington, this fifth day of July, A. D. 1848.

WM. THOS. CARROLL,
Clerk of the Supreme Court, U. S.

And afterwards, to wit, on the twenty-eighth day of July, in the year and at the term of said court last mentioned, "this cause now coming on to be further heard at this term, when the motion of James Clark, executor of William McIntire, and the court being satisfied that there is due to the said Clark, as such executor, the sum of eleven hundred and ninety $\frac{51}{100}$ dollars, which is the oldest and best lien on that part of the real estate which was of John Mahard, jr., and is described in the answer of said William McIntire, deceased, on file in this cause, which the complainant has sold under the former order of this court, and the said sale was confirmed at the last term of this court and it is thereupon ordered, that the said complainant and assignee, out of the moneys derived from the sale of said lands and remaining with the said Lafayette Bank of Cincinnati, pay to the said James Clark, executor as aforesaid, or to Daniel Van Matre, his solicitor, the sum of eleven hundred and ninety $\frac{51}{100}$ dollars, with interest from the 29th day of July, 1848, and for all other matters and questions not herein or heretofore disposed of, this cause is continued."

The following exhibits were filed in this cause on the hearing thereof, to wit:

Know all men by these presents, that I, John Mahard, jr., of Cin-

[illegible], Ohio, for and in consideration of the sum of twenty-five thousand dollars, to me in hand well and truly paid by the President, Directors, and Company of the Franklin Bank of Cincinnati, the receipt whereof is hereby acknowledged, do hereby bargain, sell, and convey, to the said the President, Directors, and Company of the Franklin Bank of Cincinnati, their successors and assigns forever, the following real estate, with all the buildings and improvements thereon, situate in the city of Cincinnati, county of Hamilton, and State of Ohio, and described as follows: First, all that part of in-lot numbered on the original plan of said city four hundred and sixty, (460,) which was conveyed to me by John Mahard, as per deeds recorded in book No. 29, page 251, and book No. 62, page 236, of Hamilton county records, saving and excepting that part of said in-lot conveyed by me to William Mahard, as per deed recorded in book No. 68, page 504; the part of said in-lot, No. 460, hereby conveyed, being more particularly described as follows, viz., beginning at the southwest corner of Walnut and Water streets; thence southwardly, with the west line of Walnut street, to the Ohio river; thence westwardly, with the river's edge, one hundred feet, more or less, to the west line of said in-lot No. 460; thence northwardly, to the southwest corner of Dyer's lot; thence probably eastwardly, fifty-three feet; thence northwardly, to the south side of Water street; and thence eastwardly, about forty-six feet on Water street, to the place of beginning.

Also all that other lot, with the buildings and improvements thereon, situate as above, and being that part of in-lot numbered on the original plan of said city four hundred and four, (404,) which was conveyed to me by John Mahard, as per deed recorded in book No. 62, page 236, and by the United States Bank, as per deed recorded in book No. 34, page 282, and described more particularly as follows: Beginning at the northeast corner of Walnut and Water streets; thence running eastwardly, with the north line of Water street, seventy-four feet; thence northwardly, at right angles with Water street, fifty-two feet; thence eastwardly, parallel with Water street, ten feet; thence northwardly, parallel with Walnut street, six feet; thence westwardly, parallel with Water street, eighty-four feet, to Walnut street; thence southwardly, with the line of Walnut street, fifty-seven feet and a half, to the place of beginning; together with all the privileges and appurtenances to the same belonging.

To have and to hold the same to the said the President, Directors, and Company of the Franklin Bank of Cincinnati, their successors and assigns forever; hereby covenanting that the title, so conveyed, is clear, free, and unincumbered; and that he will warrant and defend the same against all claims whatsoever.

Provided, always, that if the said John Mahard, jr., shall pay or cause to be paid, unto the said the President, Directors, and Company of the Franklin Bank of Cincinnati all sums of money which he is under obligations to them to pay, either as maker or endorser of any promissory note or notes, and as drawer, acceptor, and endorser of any bill or

bills of exchange, or either of them, as they [illegible] payable, and shall pay and discharge all his [illegible] kind and liabilities to them, now amounting to about [illegible] dollars, and all other indebtedness and liabilities of whatever kind he may hereafter incur and come under to them, according to their tenor and effect, then these presents shall be void, but otherwise be and remain in full force and effect.

In witness whereof the said John Mahard, jr., and Mary K. Mahard, wife of said John Mahard, jr., who hereby forever relinquishes her dower in said premises, have hereunto set their hands and seals, this the third day of April, in the year of our Lord eighteen hundred and forty-one.

JOHN MAHARD, Jr., [SEAL.]
MARY K. MAHARD. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN JONES,
WILLIAM MCAFEE.

STATE OF OHIO,
Hamilton county, ss.

Be it remembered, that on this the third day of April, in the year of our Lord eighteen hundred and forty-one, before me, the subscriber, a justice of the peace in and for said county, personally came John Mahard, jr., and Mary K. Mahard, the grantors in the above conveyance, and acknowledged the same to be their voluntary act and deed for the uses and purposes therein named. And the said Mary K. Mahard, wife of the said John Mahard, jr., being examined by me separate and apart from her said husband, and the contents of said deed being made known [and] explained to her, declared that she did voluntarily sign, seal, and acknowledge the same, and that she is still satisfied therewith, as her act and deed for the uses and purposes therein named.

In testimony whereof I have hereunto subscribed my name and affixed my seal, on the day and year last aforesaid.

JOHN JONES, *J. P.* [SEAL.]

(Endorsement.) "No. 1, received 18th October, 1841, and recorded in book No. 80, page 592.

GRIFFIN YEATMAN,
Recorder of Hamilton county, Ohio.

In consideration of one dollar to us paid by John H. Groesbeck, John C. Culbertson, and John Kilgour, and other valuable considerations, we, the President, Directors, and Company of the Franklin Bank of Cincinnati, do hereby assign, bargain, sell, and convey, unto John H. Groesbeck, John C. Culbertson, and John Kilgour, their survivors, and survivor, his heirs and assigns forever, all our right, title, interest and estate in and to the within described property and mortgage, having this day assigned to the said grantors the claims which the same secures.

In testimony whereof the said the President, Directors, and Company of the Franklin Bank of Cincinnati have caused John H. Groesbeck, their president, hereto to subscribe his name and affix the corporate seal of said bank, this thirty-first day of December, eighteen hundred and forty-two.

J. H. GROESBECK, *President.*

Signed, sealed, and acknowledged, and delivered in presence of us—
W. A. O'HARA,
WM. B. WOOD.

STATE OF OHIO,
City of Cincinnati, ss.

Be it remembered, that on this thirty-first day of December, eighteen hundred and forty-two, before me, an acting notary public in and for the city of Cincinnati, came the President, Directors, and Company of the Franklin Bank of Cincinnati, the grantors in the above conveyance, by John H. Groesbeck, their president, and acknowledged the same to be their voluntary act and deed for the uses and purposes therein mentioned, and that the seal thereunto affixed was their corporate seal of said bank.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal, on the day and year last above written.

[SEAL.] A. J. WHEELER,
Notary Public.

For plat see original, page 237.

CINCINNATI, *May 24th*, 1847.

The undersigned being called upon by Messrs. Groesbeck and others to locate and define the premises described in mortgage of John Mahard, jr., and wife, to the Franklin Bank of Cincinnati, dated 3d day of April, 1841, and recorded in Hamilton county records, in book No. 80, page 592, repaired to the premises and made a survey thereof, of which survey the foregoing plat is a correct representation. In lot No. 460, (of which the premises described in mortgage referred to is a part,) measures, including its share of surplus in the block, ninety-nine feet six inches on Water street, of which the Stewart or Dyer lot has the westerly thirty feet, running back towards the river one hundred and four feet; between said Dyers' northeast corner, (which is thirty feet east of northwest corner of in-lot No. 460,) and the northwest corner of the brick warehouse, there was forty-five feet three inches, which distance I divided, and the center thereof made the northwest corner of the mortgaged premises, being distant from the Dyer lot twenty-two feet seven and a half inches; from thence run southerly on a line par-

aller to Walnut street, to a point on the line of the [illegible] wall of [illegible] stone warehouse, and found the distance to be [illegible] seven feet; from thence run westerly on a line with said north wall, i. e., parallel to Water street, to a point equidistant between the northwest corner of said stone warehouse and the east line of the C. B. Dyer lot, and found the same to measure eighteen feet one inch, (the whole distance measuring thirty-six feet two inches); from thence, southerly, parallel to the Dyer lot, or to Walnut street, thirty-seven feet to the wharf; thence easterly, along the wharf, fifty-one feet five inches, to Walnut street; thence, northerly on west line of Walnut street, one hundred and four feet, to Water street; thence westerly, on Water street, forty six feet ten and a half inches, to a point equidistant between the northwest corner of the brick warehouse and the Dyer lot, the place of beginning. The walls of the brick and stone warehouses were standing at the time the survey was made, sufficiently high above the foundations to determine accurately their identical location, and their northwest corners are represented by the red lines A and B, in the plat.

ERASMUS GEST,
City surveyor.

(Endorsed:) "Received January 7, 1847.—Recorded book 122, page 217.

THOS. HECKWELDER, *Recorder.*"

FRANKLIN BANK OF CIN., *March* 8, 1842.

For value received we hereby release and forever discharge the lien of this bank upon in-lot 404, situate at the northeast corner of Walnut and Water streets, Cincinnati, with all buildings thereon included in the within mortgage, and all the estate, right, and interest which we have therein or thereto by virtue of this mortgage. The recorder will please enter the same on the record.

By order of the President, Directors, and Co., of the Franklin Bank of Cincinnati.

[SEAL.]

W. HOOPER, *Cashier.*
J. H. GROESBECK, *Pres't.*

"Recorded in the margin of the within recorded mortgage, in book 80, page 592. 8th March, 1842.

GRIFFIN YEATMAN, *Recorder.*"

No.——

CINCINNATI, *15th May*, 1841.

Exch. for $2,000 00.

Five months after date of this first of exchange, second of same tenor and date unpaid, pay to the order of Andrew Johnson, two thousand $\frac{00}{100}$ dollars, for value received, and place the same to account of

Your obedient servants,
J. & W. MAHARD.

To MAHARD & BROTHER, *New Orleans.*

[Endorsed across the face]—Mahard & Brother.

(Endorsements:) ANDREW JOHNSON,
JOHN MAHARD, Jr.

Pay J. B. Perrault esq., cashier, or order.
W. HOOPER, *Cashier*.

No. ——— CINCINNATI, 15*th May*, 1841.

Exch. for $2,000 00.

Five months after date of this second of exchange, first of same tenor and date unpaid, pay to the order of Andrew Johnson two thousand $\frac{00}{100}$ dollars, for value received, and place the same to account of

Your obedient servants,
J. & W. MAHARD.

To MAHARD & BROTHER, *New Orleans*.

[Endorsed across the face]—First accepted. Mahard & Brother.

(Endorsements:) ANDREW JOHNSON,
JOHN MAHARD, Jr.

Pay J. B. Perrault, esq., cashier, or order.
W. HOOPER, *Cashier*.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this eighteenth day of October, in the year one thousand eight hundred and forty-one, at the request of the cashier of and holder for the Citizens' Bank of Louisiana, of the original draft, whereof a true copy is on the reverse hereof written, I, Charles Boudousquie, notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, proceeded to the store of Mahard & Brother, and there presenting said drafts to one of the firm, I demanded payment thereof, and was by him answered, that they had no funds to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchanges, re-exchanges, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said draft.

Thus done and protested in the presence of Louis Mimelle and Ludvig Rosenorn, both of this city, witnesses, who have signed with me, the notary.

In testimony whereof I grant the presents, under my sig-
[SEAL.] nature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

L. MEMILLE,
ROSENORN,
CHS. BOUDOUSQUIE, *Not. Pub.*

aller to Walnut street, to a point on the line of the north wall of an old stone warehouse, and found the distance to be thirty-seven feet; from thence run westerly on a line with said north wall, i. e., parallel to Water street, to a point equidistant between the northwest corner of said stone warehouse and the east line of the C. B. Dyer lot, and found the same to measure eighteen feet one inch, (the whole distance measuring thirty-six feet two inches); from thence, southerly, parallel to the Dyer lot, or to Walnut street, thirty-seven feet to the wharf; thence easterly, along the wharf, fifty-one feet five inches, to Walnut street; thence, northerly on west line of Walnut street, one hundred and four feet, to Water street; thence westerly, on Water street, forty six feet ten and a half inches, to a point equidistant between the northwest corner of the brick warehouse and the Dyer lot, the place of beginning. The walls of the brick and stone warehouses were standing at the time the survey was made, sufficiently high above the foundations to determine accurately their identical location, and their northwest corners are represented by the red lines A and B, in the plat.

ERASMUS GEST,
City surveyor.

(Endorsed:) "Received January 7, 1847.—Recorded book 122, page 217.

THOS. HECKWELDER, *Recorder.*"

FRANKLIN BANK OF CIN., *March* 8, 1842.

For value received we hereby release and forever discharge the lien of this bank upon in-lot 404, situate at the northeast corner of Walnut and Water streets, Cincinnati, with all buildings thereon included in the within mortgage, and all the estate, right, and interest which we have therein or thereto by virtue of this mortgage. The recorder will please enter the same on the record.

By order of the President, Directors, and Co., of the Franklin Bank of Cincinnati.

[SEAL.]

W. HOOPER, *Cashier.*
J. H. GROESBECK, *Pres't.*

"Recorded in the margin of the within recorded mortgage, in book 80, page 592. 8th March, 1842.

GRIFFIN YEATMAN, *Recorder.*"

No.———

CINCINNATI, *15th May*, 1841.

Exch. for $2,000 00.

Five months after date of this first of exchange, second of same tenor and date unpaid, pay to the order of Andrew Johnson, two thousand $\frac{00}{100}$ dollars, for value received, and place the same to account of

Your obedient servants,
J. & W. MAHARD.

To MAHARD & BROTHER, *New Orleans.*

[Endorsed across the face]—Mahard & Brother.

(Endorsements:) ANDREW JOHNSON,
JOHN MAHARD, Jr.

Pay J. B. Perrault esq., cashier, or order.
W. HOOPER, *Cashier*.

No. ——— CINCINNATI, 15*th May*, 1841.

Exch. for $2,000 00.

Five months after date of this second of exchange, first of same tenor and date unpaid, pay to the order of Andrew Johnson two thousand $\frac{00}{100}$ dollars, for value received, and place the same to account of

Your obedient servants,
J. & W. MAHARD.

To MAHARD & BROTHER, *New Orleans*.

[Endorsed across the face]—First accepted. Mahard & Brother.

(Endorsements:) ANDREW JOHNSON,
JOHN MAHARD, Jr.

Pay J. B. Perrault, esq., cashier, or order.
W. HOOPER, *Cashier*.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this eighteenth day of October, in the year one thousand eight hundred and forty-one, at the request of the cashier of and holder for the Citizens' Bank of Louisiana, of the original draft, whereof a true copy is on the reverse hereof written, I, Charles Boudousquie, notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, proceeded to the store of Mahard & Brother, and there presenting said drafts to one of the firm, I demanded payment thereof, and was by him answered, that they had no funds to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchanges, re-exchanges, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said draft.

Thus done and protested in the presence of Louis Mimelle and Ludvig Rosenorn, both of this city, witnesses, who have signed with me, the notary.

In testimony whereof I grant the presents, under my sig-
[SEAL.] nature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

L. MEMILLE,
ROSENORN,
CHS. BOUDOUSQUIE, *Not. Pub.*

Exch. for $2000 00/100 CINCI[illegible] May, 1841.

Five months after date of this first of exch[illegible] second of same tenor and date unpaid, pay to the order of Andrew Johnson two thousand dollars, for value received, and place the same to account of—

Your obedient servant,

J. & W. MAHARD.

To MAHARD & BROTHER, *New Orleans*.

[Endorsed across the face]—Mahard & Brother.

(Endorsed,) ANDREW JOHNSON.
JOHN MAHARD, Jr.

Pay J. B. Perrault, esq., cashier, or order.

W. HOOPER, *Cashier*.

I, the undersigned notary, do hereby certify, that the parties to the original draft, whereof a true copy is above written, have been duly notified of the protest thereof by letters to them by me written and addressed, dated on the day of said protest, and served on them respectively, in the manner following, viz:

On W. Hooper, by a letter directed to him as cashier Franklin Bank Cincinnati. On J. & W. Mahard, Andrew Johnson, and John Mahard, jr., by letters addressed to them respectively, and enclosed in the letter directed to W. Hooper, cashier; which letter was put into the post office of this city by me this day.

In faith whereof I have hereunto signed my name, together with Louis Mimelle and Ludvig Rosenorn, witnesses, at New Orleans, this eighteenth day of October, eighteen hundred and forty-one. The original is signed L. Mimelle, Rosenorn, Chas. Boudousquie, not. pub.

A true copy.

New Orleans, the 18th October, 1841.

[L. s.] Witness my seal of office.

CHS. BOUDOUSQUIE, *Not. Pub.*

No. ——. CINCINNATI, 23*d June*, 1841.

Exchange for $1,205 $\frac{00}{100}$.

Four months and ten days after date of this first of exchange, (second of the same tenor and date unpaid,) pay to the order of Andrew Johnson twelve hundred and five $\frac{00}{100}$ dollars, value received, and charge the same to account of—

Your obedient servant,

J. & W. MAHARD.

To MAHARD & BROTHER.

[Endorsed across the face]—Mahard & Brother.

(Endorsement,) ANDREW JOHNSON.

Pay J. B. Perrault, esq., cashier, or order.

J. H. GROESBECK, *President*.

United States of America,
... of Louisiana.

By this public instrument of protest be it known, that on this fifth day of November, in the year one thousand eight hundred and forty-one, at the request of the cashier of, and holder for, the Citizens' Bank of Louisiana, of the original draft, whereof a true copy is on the reverse hereof written, I, Charles Boudousquie, notary public, in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, proceeded to the counting-house of Mahard & Brother, and they being not in, I presented said draft, asking payment thereof from their book-keeper, who answered me that they had no funds to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchanges, re-exchanges, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said draft.

This done and protested, in the presence of Louis Mimelle and Ludwig Rosenorn, both of this city, witnesses, who have signed with me, the notary.

In testimony whereof I grant these presents under my signature and impress of my seal of office, at the city of New Orleans, on the day and year first above written. [SEAL.]

L. MIMELLE,
ROSENORN,
CHS. BOUDOUSQUE,
Not. Pub.

Exchange for $1,205. CINCINNATI, *June 23d*, 1841.

Four months and ten days after date of this first of exchange, (second of the same tenor and date unpaid,) pay to the order of Andrew Johnson twelve hundred and five dollars, value received, and charge the same to account of

Your obedient servants,
J. & W. MAHARD.

To MAHARD & BROTHER, *New Orleans*.

[Endorsed across the face]—Mahard & Brother.

(Endorsed) ANDREW JOHNSON.

Pay J. B. Perrault, esq., cashier, or order.
J. H. GROESBECK, *Pres't*.

I, the undersigned notary, do hereby certify, that the parties to the original draft, whereof a true copy is above written, have been duly notified of the protest thereof by letters to them by me written and addressed, dated on the day of said protest, and served on them respectively in the manner following, viz:

Exch. for $2000 00[illegible] Cincinnati, [illegible] May, 1841.

Five months after date of this first of exchange, (second of same tenor and date unpaid, pay to the order of Andrew Johnson two thousand dollars, for value received, and place the same to account of—

Your obedient servant,

J. & W. MAHARD.

To MAHARD & BROTHER, *New Orleans.*

[Endorsed across the face]—Mahard & Brother.

(Endorsed,) ANDREW JOHNSON.
JOHN MAHARD, Jr.

Pay J. B. Perrault, esq., cashier, or order.

W. HOOPER, *Cashier.*

I, the undersigned notary, do hereby certify, that the parties to the original draft, whereof a true copy is above written, have been duly notified of the protest thereof by letters to them by me written and addressed, dated on the day of said protest, and served on them respectively, in the manner following, viz:

On W. Hooper, by a letter directed to him as cashier Franklin Bank Cincinnati. On J. & W. Mahard, Andrew Johnson, and John Mahard, jr., by letters addressed to them respectively, and enclosed in the letter directed to W. Hooper, cashier; which letter was put into the post office of this city by me this day.

In faith whereof I have hereunto signed my name, together with Louis Mimelle and Ludvig Rosenorn, witnesses, at New Orleans, this eighteenth day of October, eighteen hundred and forty-one. The original is signed L. Mimelle, Rosenorn, Chas. Boudousquie, not. pub.

A true copy.

New Orleans, the 18th October, 1841.

[L. S.] Witness my seal of office.

CHS. BOUDOUSQUIE, *Not. Pub.*

No. ——. CINCINNATI, 23*d June*, 1841.

Exchange for $1,205 $\frac{00}{100}$.

Four months and ten days after date of this first of exchange, (second of the same tenor and date unpaid,) pay to the order of Andrew Johnson twelve hundred and five $\frac{00}{100}$ dollars, value received, and charge the same to account of—

Your obedient servant,

J. & W. MAHARD.

To MAHARD & BROTHER.

[Endorsed across the face]—Mahard & Brother.

(Endorsement,) ANDREW JOHNSON.

Pay J. B. Perrault, esq., cashier, or order.

J. H. GROESBECK, *President.*

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest be it known, that on this fifth day of November, in the year one thousand eight hundred and forty-one, at the request of the cashier of, and holder for, the Citizens' Bank of Louisiana, of the original draft, whereof a true copy is on the reverse hereof written, I, Charles Boudousquie, notary public, in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, proceeded to the counting-house of Mahard & Brother, and they being not in, I presented said draft, asking payment thereof from their book-keeper, who answered me that they had no funds to pay the same.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchanges, re-exchanges, damages, costs, charges, and interests, suffered or to be suffered for want of payment of the said draft.

This done and protested, in the presence of Louis Mimelle and Ludwig Rosenorn, both of this city, witnesses, who have signed with me, the notary.

In testimony whereof I grant these presents under my signature and impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.]

L. MIMELLE,
ROSENORN,
CHS. BOUDOUSQUE,
Not. Pub.

Exchange for $1,205. CINCINNATI, *June 23d*, 1841.

Four months and ten days after date of this first of exchange, (second of the same tenor and date unpaid,) pay to the order of Andrew Johnson twelve hundred and five dollars, value received, and charge the same to account of

Your obedient servants,
J. & W. MAHARD.

To MAHARD & BROTHER, *New Orleans.*

[Endorsed across the face]—Mahard & Brother.

(Endorsed) ANDREW JOHNSON.

Pay J. B. Perrault, esq., cashier, or order.
J. H. GROESBECK, *Pres't.*

I, the undersigned notary, do hereby certify, that the parties to the original draft, whereof a true copy is above written, have been duly notified of the protest thereof by letters to them by me written and addressed, dated on the day of said protest, and served on them respectively in the manner following, viz:

[illegible] unpaid) pay to the order of Stubbs & Andrews twelve hundred and thirty-seven $\frac{00}{100}$ dollars, value [illegible] and charge the same to account of—

Your obedient servants,
J. & W. MAHARD.

To MAHARD & BROTHER, *New Orleans.*

[Endorsed across the face]—Mahard & Brother.

(Endorsement) STUBBS & ANDREWS.

Pay J. B. Perrault, esq., cas., or order.

W. HOOPER, *Cash.*

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest, be it known, that on this ninth day of February, in the year one thousand eight hundred and forty-two, at the request of, the cashier of and holder for, the Citizen's Bank of Louisiana, of the original draft, whereof a true copy is on the reverse hereof written, I, Charles Boudousquie, notary public, in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned, and sworn:

Proceeded to the counting room of Mahard & Brother, and there presenting said draft to one of the firm, I demanded payment thereof, and was by him answered that they had no funds to pay said draft.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchanges, re-exchanges, damages, costs, charges, and interests, suffered or to be suffered for the want of payment of the said draft.

Thus done and protested, in the presence of Louis Mimelle and Ludvig Rosenörn, both of this city, witnesses who have signed with me, the notary.

In testimony whereof I grant these presents, under my signature [L. S.] and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

L. MIMELLE,
ROSENORN,
CHAS. BOUDOUSQUIE, *Not. Pub.*

Exchange for $1,237 08.

CINCINNATI, *October 6th*, 1841.

Four months after date of this first of exchange, (second of the same tenor and date unpaid,) pay to the order of Stubbs & Andrews twelve hundred thirty-seven $\frac{00}{100}$ dollars—value received, and charge the same to account of,

Your ob't serv'ts,
J. & W. MAHARD.

To MAHARD & BROTHER, *New Orleans.*
(Endorsed,) STUBBS & ANDREWS.

Pay to J. B. Perrault, esq., cashier, or order.

W. HOOPER, *Cashier.*

[Endorsed across the face]—Mahard & Brother.

I, the undersigned notary, do hereby certify, that the parties to the original draft, whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of said protest, and served on them respectively in the manner following, viz:

On W. Hooper, esq., by a letter directed to him as cashier, Franklin Bank, Cincinnati; on J. and W. Mahard, and Stubbs and Andrews, by letters addressed to them respectively, and enclosed in the letter directed to W. Hooper, esq., cashier; which letter was put into the post office of this city by me this day.

In faith whereof I have hereunto signed my name, together with Louis Mimelle and Ludvig Rosenörn; witnesses, at New Orleans, this ninth day of February, eighteen hundred and forty-two. The original is signed, L. Mimelle, Rosenörn, Charles Boudousquie, notary pub.

A true copy; New Orleans, the 9th February, 1842. Witness [L. S.] my seal of office.

CHAS. BOUDOUSQUIE, *Not. pub.*

To———

Exchange for $650.00.

Cincinnati, 27th Oct., 1841.

Four months after date of this first of exchange, (second of the same tenor and date unpaid,) pay to the order of J. and W. Mahard six hundred and fifty $\frac{100}{100}$ dollars, value received, and charge the same to account of—

Your ob't serv't,

WM. JNO. MACARTY.

To Mahard & Brother,
New Orleans.

(Endorsed,) J. and W. Mahard.

Pay J. B. Perrault, esq., cas., or order.

W. HOOPER, *Cashier.*

[Endorsed across the face]—Mahard & Brother.

United States of America,
State of Louisiana.

By this public instrument of protest be it known, that on this second day of March, in the year one thousand eight hundred and forty-two, at the request of the cashier of, and holder for, the Citizen's Bank of Louisiana, of the original draft, whereof a true copy is on the reverse hereof written, I, Charles Boudousquie, notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn:

Proceeded to the counting-room of Mahard & Brother, and there

presenting said draft to one of the firm, I demanded payment thereof, and was by him answered that they had no funds to pay the same.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchanges, re-exchanges, damages, costs, charges and interests, suffered or to be suffered for want of payment of the said draft.

Thus done and protested, in the presence of Louis Menelle, Ludvig Rosenörn, both of this city, witnesses, who have signed with me, the notary.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, [L. S.] on the day and year first above written.

L. MIMILLE,
ROSENORN,
CHS. BOUDOUSQUIE.

Exchange for $650 00. CINCINNATI, *27th Oct.*, 1841.

Four months after date of this first of exchange, (second of the same tenor and date unpaid), pay to the order of J. & W. Mahards six hundred and fifty $\frac{00}{100}$ dollars, value received, and charge the same to account of—

Your obedient servant,
WM. JNO. MACARTNEY.

To MAHARD & BROTHERS, *New Orleans.*

(Endorsed.) J. & W. MAHARDS.

Pay to J. B. Perrault, esq., cas., or order.

W. HOOPER, *Cashr.*

[Endorsed across the face]—Mahard and Brothers.

I, the undersigned notary, do hereby certify, that the parties to the original draft, whereof a true copy is above written, have been duly notified of the protest thereof by letters to them by me written and addressed, dated on the day of said protest, and served on them respectively in the manner following, viz., on W. Hooper, esq., by a letter directed to him as cashier, Franklin Bank, Cincinnati; on Wm. Jno. Macartney and J. & W. Mahard, by letters addressed to them respectively, and enclosed in the letter directed to W. Hooper, esq., cashier, which letter was put into the post office of this city by me this day.

In faith whereof I have hereunto signed my name, together with Louis Mimille, and Ludvig Rosenörn, witnesses, at New Orleans, this second day of March, eighteen hundred and forty-two.

The original is signed,

L. MIMILLE,
ROSENORN,
CHS. BOUDOUSQUIE, *Not. pub.*

A true copy. New Orleans, the 2d March, 1842.

Witness my seal of office.

[SEAL.] CHS. BOUDOUSQUIE, *Not. pub.*

$695 00. CINCINNATI, 8th January, 1842.

Ninety-five days after date, we promise to pay to the order of Andrew Johnson, at the Franklin Bank of Cincinnati, six hundred and ninety-five dollars, for value received.

J. & W. MAHARD.

Credit the drawers.

JOHN McLAUGHLIN.

(Endorsed) ANDREW JOHNSON,
JOHN McLAUGHLIN.

UNITED STATES OF AMERICA,
And State of Ohio, sct.

By this public instrument of protest be it known, that on Saturday, the sixteenth day of April, in the year of our Lord one thousand eight hundred and forty-two, I, A. J. Wheeler, notary public, by lawful authority, duly commissioned and sworn, living in the city of Cincinnati, in the State aforesaid, at the request of the cashier of Franklin Bank of Cincinnati, holder of the original note hereunto attached, after demanding payment at said bank at the close of bank hours, and receiving for answer "no funds in bank to pay it," then protested the same for non-payment, and notified the endorsers.

Whereupon, I, the said notary, on the authority aforesaid, have protested, and do hereby solemnly protest, as well against the drawers of the said note, as against all other persons whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered or to be suffered for the want of payment thereof.

Thus done and protested at Cincinnati, the day and year above written. In testimony whereof I grant these presents under my [L. S.] signature and the impress of my notarial seal of office.

A. J. WHEELER,
Notary Public.

$556 00. CINCINNATI, 13th January, 1842.

Ninety-five days after date, we promise to pay to the order of Andrew Johnson, at the Franklin Bank in this city, five hundred [and] fifty-six dollars, for value received.

J. & W. MAHARD.

Credit the drawers.

JOHN McLAUGHLIN.

(Endorsement) "ANDREW JOHNSON,
"JOHN McLAUGHLIN."

UNITED STATES OF AMERICA,
And State of Ohio, sct.

By this public instrument of protest be it known, that on Saturday, the twenty-third day of April, in the year of our Lord one thousand eight hundred and forty-two, I, A. J. Wheeler, notary public, by law-

ful authority duly commissioned and sworn, living in the city of Cincinnati, in the State aforesaid, at the request of the cashier of the Franklin Bank of Cincinnati, holder of the original note hereunto attached, after demanding payment at said bank at the close of bank hours, and receiving for answer "no funds in bank to pay it," then protested the same for non-payment and notified [the] endorsers.

Whereupon, I, the said notary, on the authority aforesaid, have protested, and do hereby solemnly protest, as well against the drawers of the said note, as against all other persons whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered or to be suffered for the want of payment thereof.

Thus done and protested at Cincinnati, the day and year above written. In testimony whereof I grant these presents, under my signature and the impress of my notarial seal of office.

[L. S.]

A. J. WHEELER,
Notary Public.

$862 00. CINCINNATI, *26th January*, 1842.

Ninety-five days after date, we promise to pay to the order of Andrew Johnson, at the Franklin Bank of Cincinnati, eight hundred [and] sixty-two dollars for value received.

JOHN W. MAHARD.
JOHN McLAUGHLIN,

Credit the drawers.
(Endorsed.)

"ANDREW JOHNSON,
JOHN McLAUGHLIN."

UNITED STATES OF AMERICA,
And State of Ohio, set.

By this public instrument of protest be it known, that on Wednesday, the fourth day of May, in the year of our Lord one thousand eight hundred and forty-two, I, A. J. Wheeler, notary public, by lawful authority duly commissioned and sworn, living in the city of Cincinnati, in the State aforesaid, at the request of the cashier of the Franklin Bank of Cincinnati, holder of the original note hereunto attached, after demanding payment at said bank at the close of bank hours, and receiving for answer "no funds in bank to pay it," then protested the same for non-payment, and notified the endorsers.

Whereupon, I, the said notary, on the authority aforesaid, have protested, and do hereby solemnly protest, as well against the drawers of said note, as against all other persons whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered or to be suffered for the want of payment thereof.

Thus done and protested, at Cincinnati, the day and year above written.

In testimony whereof I grant these presents under my signature, and the impress of my notarial seal of office.

[L. S.]

A. J. WHEELER.
Notary Public.

00. CINCINNATI, 2nd April, 1841.

Ninety-five days after date, we promise to pay to the order of Andrew Johnson, at the Franklin Bank of Cincinnati, two hundred [and] eighty-three dollars, value received.

J. & W. MAHARD.
JOHN McLAUGHLIN,

Credit the drawers.
(Endorsed.)

"ANDREW JOHNSON,
JOHN McLAUGHLIN."

UNITED STATES OF AMERICA,
And State of Ohio, sct.

By this public instrument of protest be it known, that on Saturday, the ninth day of July, in the year of our Lord one thousand eight hundred and forty-two, I, A. J. Wheeler, notary public, by lawful authority duly commissioned and sworn, living in the city of Cincinnati, in the State aforesaid, at the request of the cashier of the Franklin Bank of Cincinnati, holder of the original note hereunto attached, after demanding payment at said bank at the close of bank hours, and receiving for answer, "no funds in bank to pay it," then protested the same for non-payment, and notified the endorsers.

Whereupon, I, the said notary, on the authority aforesaid, have protested, and do hereby solemnly protest, as well against the drawers of the said note, as against all other persons whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered or to be suffered for the want of payment thereof.

Thus done and protested, at Cincinnati, the day and year above written.

In testimony whereof I grant these presents under my signature and the impress of my notarial seal of office.
[L. S.]

A. J. WHEELER,
Notary Public.

No. ——— CINCINNATI, *24th July*, 1841.

Exchange for $6,150.

Four months after date of this first of exchange, (second of the same tenor and date unpaid,) pay to the order of Andrew Johnson six thousand one hundred and fifty dollars, value received, and charge the same to account of—

Your obedient servants,
J. & W. MAHARD.

(Endorsement.)

ANDREW JOHNSON,
JOHN MAHARD, Jr.

Pay J. B. Perrault, esq., cas., or order.

W. HOOPER, *Cas.*

[Endorsed across the face]—Mahard and Brother.

No. ——— CINCINNATI, 4th *August*, 1841.

Exchange for $5,710 $\frac{00}{100}$.

Four months and ten days after date of this first of exchange, (second

of the same tenor and date unpaid,) pay to the order of Andrew John-
son five thousand seven hundred and ten [illegible] value received,
and charge the same to account of—

Your obedient servants,
J. & W. MAHARD.

To MAHARD & BROTHER, *New Orleans*.

(Endorsement,) ANDREW JOHNSON,
JOHN MAHARD, Jr.

[Endorsed across the face]—Mahard & Brother.

Pay to J. B. Perrault, esq., cashier, or order,
W. HOOPER, *Cashier*.

$773 00. CINCINNATI, *October 2d*, 1841.

Ninety-five days after date we promise to *to* pay to the order of Andrew Johnson, at the Franklin Bank of Cincinnati, seven hundred and seventy-three dollars, for value received.

J. & W. MAHARD.

Credit the drawers. JOHN McLAUGHLIN.

(Endorsements,) "ANDREW JOHNSON,
JOHN McLAUGHLIN.

May 10th, 1842, received on account $475."

OFFICE OF THE TRUSTEES OF THE FRANKLIN BANK OF CINCINNATI.

The following statement shows the amount of money received for rent of the Mahard property, corner of Water and Walnut streets, and disbursement of same:

1843.	January	19,	received	1	quarter rent,	$125 00	
	May	20,	"	1	"	125 00	
	August	2,	"	1	"	125 00	
	October	25,	"	1	"	125 00	
1844.	February	19,	"	1	"	125 00	
	July	20,	"	2	"	250 00	
	October	30,	"	1	"	125 00	
1845.	January	18,	"	1	"	125 00	
	April	19,	"	1	"	125 00	
	July	22,	"	1	"	125 00	
	October	21,	"	1	"	125 00	
1846.	January	19,	"	1	"	125 00	
	April	20,	"	1	"	125 00	
	July	18,	"	1	"	125 00	
	October	19,	"	1	"	125 00	
1847.	January	19,	"	1	"	125 00	
							2,125
1843.	February	2,	paid	taxes	1842,	146 70	
	March	8,	"	insurance,		82 09	
	September	8,	"	do.		22 50	

	October [illegible],	"	John Mahard,	125 00	
	December 8,	"	taxes 1843,	156 48	
1844.	January 22,	"	John Mahard,	71 82	
	April 22,	"	do.	125 00	
	July 25,	"	do.	250 00	
	September 7,	"	insurance,	22 50	
	November 2,	"	John Mahard,	48 00	
	December 23,	"	taxes 1844,	156 48	
1845.	April 21,	"	John Mahard,	93 52	
	July 22,	"	R. Fenley's bill for work,	5 24	
	July 26,	"	John Mahard,	119 76	
	September 3,	"	insurance,	22 50	
	October 21,	"	John Mahard,	102 50	
	December 18,	"	taxes 1845,	146 70	
1846.	May 9,	"	John Mahard,	103 30	
	September 7,	"	insurance,	22 50	
	December 19,	"	taxes,	144 26	
	January 7,	"	cash to assignee,	250 00	
					2,166 76
Balance due trustees on account - - - -					41 76

Cincinnati, November 8th, 1847.

JOHN KILGOUR,
Trustee of the Franklin Bank of Cincinnati.

Know all men by these presents, that John Mahard and Mary K. Mahard, his wife, of the county of Hamilton, in the State of Ohio, in consideration of fifteen thousand dollars, to them paid by the President, Directors, and Company of the Lafayette Bank of Cincinnati, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, and convey, to the said the President, Directors, and Company of the Lafayette Bank of Cincinnati, their successors and assigns forever, all the real estate next hereinafter described, as follows, to wit, all that tract of land situate in section 22, township 4, and second fractional range of the Miami purchase, in said county, described as follows: said tract to be laid off on the north side of the southeast quarter of said section, by a line running parallel with the north boundary of said quarter section, from east to west, at such a distance south from said north boundary, as to include 120 acres, except 10 acres sold to S. W. Phelps off of the east end of said tract, and being the same premises conveyed to said Mahard, by Charles Fox, by deed recorded in book 58, page 437, of the records of said county.

Also all that other tract of land in the same section, township and range, being the southwest quarter of said section No. 22, excepting the forfeit in the northwest corner; and also the lot of nine acres, 73 square rods, conveyed by Wm. McIntire to A. Martin, by deed recorded in the records of said county, containing after said reservations 123 acres, three roods, and 20½ perches of land; and the

same tract conveyed to said Mahard by said [illegible] McIntire, by deed recorded in book 41, page 478, of said records.

Also a tract of one acre, one rood, and four perches of land, adjoining the last described tract, conveyed to said Mahard by said Alexander Martin, by deed recorded in book 50, page 456, of said records.

Also that other tract of land in same township and range, known as the forfeiture of quarter section No. 18, on the plat of quarter sections, lying in a regular square in the northeast corner of said quarter section, and containing 26⅔ acres of land, and the same premises conveyed to said Mahard by Speer Ferguson, by deed recorded in book 49, page 404 of said records.

Also that other tract of land, known as the forfeiture of the northwest quarter of section twenty-one, in the same township and range, being a tract of 26⅔ acres, in the northeast corner of said quarter section, laid off in a regular square, and the same tract conveyed to the said Mahard by B. Jones, by deed recorded in book 58, page 453 of the records aforesaid; to all of which deeds reference is made, together with all the privileges and appurtenances to the same belonging.

To have and to hold the said premises with the appurtenances, unto the said the President, Directors, and Company of the Lafayette Bank of Cincinnati, their successors and assigns, forever.

And the said John Mahard, for himself, his heirs, executors, and administrators, doth hereby covenant, that the title so conveyed is clear, free, and unincumbered. And that he will warrant and forever defend the same against the lawful claims of all persons whomsoever.

Provided, always, and these presents are on this condition, that if the said John Mahard, together with William Mahard, partners under the firm of J. & W. Mahard, their heirs, executors, administrators, or assigns, shall pay to the said the President, Directors, and Company of the Lafayette Bank, of Cincinnati, their successors or assigns, the sum of fifteen thousand dollars, according to the tenor and effect of their two promissory notes, of even date herewith, and payable as follows, one in ninety-five days from date, to the order of Andrew Johnson, and by said Johnson endorsed, for five thousand dollars; and the other, payable in ninety-five days from date, to the order of John McLaughlin, for ten thousand dollars, and by the said McLaughlin endorsed; together with all notes or bills of exchange which shall hereafter be given in renewal or extension of either or both of said notes; and also all costs, charges, attorney's fees, and other expenses, which may accrue by reason of the non-payment of either of said notes at maturity, or which may be incurred by means of a foreclosure of this mortgage, then this indenture, and every part thereof, to be void and of no effect; otherwise to remain in full force and virtue.

In testimony whereof, the said John Mahard, together with the said Mary K., wife of the said John, who hereby forever relinquishes all her right of dower in said premises, have hereunto set their hands and

...nday, this seventh day of December, in the year of our Lord one thousand eight hundred and forty-one.

JOHN MAHARD, JR., [SEAL.]
MARY K. MAHARD. [SEAL.]

Signed, sealed, and delivered, in presence of—
JOHN JONES,
ANDREW WILSON.

THE STATE OF OHIO, *Hamilton county, ss.*

Before me, a justice of the peace, within and for the county aforesaid, personally came John Mahard and Mary K. Mahard, his wife, the grantors in the foregoing conveyance, and acknowledged that they executed the same as their voluntary act and deed for the uses and purposes therein expressed. And the said Mary K. Mahard, wife of the said John, being by me examined separate and apart from her said husband, and the contents of said deed made known and explained to her, acknowledged that she executed the same as her voluntary act and deed, without any fear or coercion of her said husband, and that she is still satisfied therewith as her act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my seal, this tenth day of December, A. D. 1841.

JOHN JONES, *J. P.* [SEAL.]

(Endorsement.) "No. 4. Recorded 13th January, 1842, and recorded in book No. 83, page 206.

"GRIFFIN YEATMAN,
"*Recorder, Hamilton county, Ohio.*"

$5,000 00. CINCINNATI, *9th December*, 1841.

Ninety-five days after date we promise to pay to the order of Andrew Johnson, at the Lafayette Bank, in this city, five thousand dollars. Value received. J. & W. MAHARD.
Credit the drawers. ANDREW JOHNSON.
(Endorsement.) "ANDREW JOHNSON."

UNITED STATES OF AMERICA, *State of Ohio, sct.*

By this public instrument of protest be it known, that on Tuesday, the fifteenth day of March, in the year of our Lord one thousand eight hundred and forty-two, I, John T. Keys, notary public for the county of Hamilton, in the State of Ohio, by lawful authority duly commissioned and sworn, living in the city of Cincinnati, in the county and State aforesaid, at the request of the cashier of the Lafayette Bank of Cincinnati, holder of the original note, (a copy of which is on the other side hereof written,) after demanding payment at said bank, at the close of bank hours, and receiving for answer "No funds in bank to pay it," then protested the same for non-payment, and notified the endorsers.

Whereupon I, the said notary, on the authority aforesaid, have protested, and do hereby solemnly protest, as well against the drawer of

the said note, as against all other persons whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered or to be suffered, for the want of payment thereof.

Thus done and protested, at Cincinnati, the day and year above written. In testimony whereof I grant these presents, under my signature and the impress of my notarial seal of office.

[SEAL.] JOHN F. KEYS, *Not. Pub.*

$5,000. CINCINNATI, *7th Dec.*, 1841.

Ninety-five days after date, we promise to pay to the order of Andrew Johnson, at the Lafayette Bank in this city, five thousand dollars, value received.

J. & W. MAHARD.

Credit the drawers. ANDREW JOHNSON.

Endorsed—ANDREW JOHNSON.

$10,000. CINCINNATI, *Dec.* 7, 1841.

Ninety-five days after date, we promise to pay to the order of John McLaughlin, at the Lafayette Bank in this city, ten thousand dollars, value received.

J. & W. MAHARD.

Credit the drawers. JOHN McLAUGHLIN.

(Endorsement) "JOHN McLAUGHLIN."

UNITED STATES OF AMERICA,
State of Ohio, sct.

By this public instrument of protest be it known that, on Tuesday, the 15th day of March, in the year of our Lord one thousand eight hundred and forty-two, I, John F. Keys, notary public, for the county of Hamilton, in the State of Ohio, by lawful authority duly commissioned and sworn, living in the city of Cincinnati; in the county and State aforesaid, at the request of the cashier of the Lafayette Bank of Cincinnati, holder of the original note, (a copy of which is on the other side hereof written,) after demanding payment at said bank, at the close of bank hours, and receiving for answer, "no funds in bank to pay it," then protested the same for non-payment, and notified the endorsers.

Whereupon I, the said notary, on the authority aforesaid, have protested, and do hereby solemnly protest, as well against the drawer of the said note as against all other persons whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered or to be suffered, for the want of payment thereof.

Thus done and protested, at Cincinnati, the day and year above written. In testimony whereof I grant these presents, under my signature and the impress of my notarial seal of office.

[SEAL.] JOHN F. KEYS, *Not. Pub.*

$10,000. CINCINNATI, *Dec. 7th*, 1841.

Ninety-five days after date, we promise to pay to the order of John McLaughlin, at the Lafayette Bank in this city, ten thousand dollars, value received. J. & W. MAHARD.

Credit the drawer. JOHN McLAUGHLIN.

Endorsed: JOHN McLAUGHLIN.

No.—— CINCINNATI, 15*th Dec.*, 1841.

Exchange for $3,420 $\frac{00}{100}$.

Sixty days after date of this first of exchange, (second of same tenor and date unpaid,) pay to the order of J. & W. Mahard three thousand four hundred and twenty $\frac{00}{100}$ dollars, value received, and charge the same to account of—

Your obedient servant,
JOHN McLAUGHLIN.

To MAHARD & BROTHER, New Orleans.

(Endorsed) J. & W. MAHARD.

Pay Geo. O. Hall, esq., cashier, or order.

UNITED STATES OF AMERICA,
State of Louisiana.

By this public instrument of protest be it known, that on this twenty-seventh day of December, in the year one thousand eight hundred and forty-one, at the request of the Commercial Bank of New Orleans, holder of the original draft whereof a true copy is on the reverse hereof written, I, Hilary Breton Cenas, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft to the book-keeper of the drawers, at their counting-house, (said drawers not being in,) and demanded acceptance thereof, and was answered that the same would not be accepted.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered, or to be suffered, for the want of acceptance of the said draft.

Thus done and protested in the presence of E. Granet and A. Commandeur, witnesses.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, [SEAL.] on the day and year first above written.

H. B. CENAS, *Notary Public.*

Exchange for $3,420. Cincinnati, [illegible] Dec., 1841.

Sixty days after date of this first of exchange, (second of the same tenor and date unpaid,) pay to the order of J. & W. Mahard three thousand four hundred and twenty dollars, value received, and charge the same to account of—.

Your obedient servant,
JOHN McLAUGHLIN.

To Mahard & Brother,
New Orleans.

Endorsed.] J. & W. Mahard.

Pay Geo. O. Hall, esq., cashier, or order.
W. G. W. GANO, *Cashier.*

I, Hilary Breton Cenas, a notary public in and for the parish of Orleans, State of Louisiana, residing in the city of New Orleans, duly commissioned and sworn, do certify, that on the day of the date of this protest I notified the drawer and all the endorsers of the bill of exchange hereunto attached, of the protest of the same for non-acceptance, by notices in writing and print by me signed, of the same date as this protest, and which I enclosed in the one for W. G. W. Gano, cashier, directed to him at Cincinnati, Ohio, and on the same day I deposited said notices in the post office in this city.

In faith whereof I grant these presents under my signature and the impress of my seal of office, at New Orleans, this twenty-seventh day of December, 1841. [L. S.]

H. B. CENAS, *Not. Pub.*

$163 00. Cincinnati, 1*st February*, 1842.

Ninety-five days after date we promise to pay to the order of Andrew Johnson, at the Lafayette Bank in this city, one hundred [and) sixty-three dollars, value received.

J. & W. MAHARD,
ANDREW JOHNSON.

Credit the drawers.

(Endorsed.) "Andrew Johnson."

$163 00. Cincinnati, 1*st February*, 1842.

Ninety-five days after date we promise to pay to the order of Andrew Johnson, at the Lafayette Bank in this city, one hundred [and] sixty-three dollars, value received.

J. & W. MAHARD,
ANDREW JOHNSON.

Credit the drawers.

(Endorsed.) Andrew Johnson.

UNITED STATES OF AMERICA,
State of Ohio, sct.

By this public instrument of protest be it known, that on Tuesday, the tenth day of May, A. D. one thousand eight hundred and forty-two, I, Flamen Ball, notary public for the county of Hamilton, in the State of Ohio, by lawful authority duly commissioned and sworn, and living in the city of Cincinnati, in the county and State aforesaid, at the request of the cashier of the Lafayette Bank of Cincinnati, presented the original note annexed (a true copy whereof is hereupon written,) at the close of bank hours, and demanded payment thereof, at the place where the same was made payable, of the teller of said bank, which was refused; I then protested the same for non-payment, and notified the endorser.

Whereupon I, the said notary, on the authority aforesaid, have protested, and do hereby solemnly protest, as well against the drawer of said note, as against all other persons whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interests, suffered or to be suffered, for the want of payment thereof.

Thus done and protested at Cincinnati, the day and year above written. In testimony whereof I grant these presents under [L. S.] my signature and the impress of my notarial seal of office.

F. BALL, *Notary public.*

$162 00. CINCINNATI, *8th February*, 1842.

Ninety-five days after date, we promise to pay to the order of Andrew Johnson, at the Lafayette Bank, in this city, one hundred [and] sixty-two dollars, value received.

J. & W. MAHARD.

Credit the drawers.

ANDREW JOHNSON.

(Endorsed.)
"ANDREW JOHNSON."

$162 00. CINCINNATI, *8th February*, 1842.

Ninety-five days after date, we promise to pay to the order of Andrew Johnson at the Lafayette Bank, in this city, one hundred [and] sixty-two dollars, value received.

J. & W. MAHARD.

Credit the drawers.

ANDREW JOHNSON.

(Endorsed.)
"ANDREW JOHNSON."

UNITED STATES OF AMERICA,
State of Ohio, sct.

By this public instrument of protest be it known, that Tuesday, the

seventeenth day of May, A. D. one thousand eight hundred and forty-two, I, Flamen Ball, notary public for the county of Hamilton, in the State of Ohio, by lawful authority duly commissioned and sworn, and living in the city of Cincinnati, in the county and State aforesaid, at the request of the cashier of the Lafayette Bank of Cincinnati, presented the original note annexed, (a true copy whereof is hereupon written) at the close of bank hours, and demanded payment thereof at the place where the same was made payable, which was refused. I then protested the same for non-payment and notified the endorser.

Whereupon, I, the said notary, on the authority aforesaid, have protested, and do hereby solemnly protest, as well against the drawer of said note, as against all other persons whom it doth or may concern, for exchange, re exchange, and all costs, charges, damages, and interests, suffered or to be suffered for the want of payment thereof.

Thus done and protested at Cincinnati, the day and year above written. In testimony whereof I grant these presents under my [L. S.] signature and the impress of my notarial seal of office.

F. BALL, *Notary Public.*

Articles of agreement made and concluded upon, by and between John Mahard, sen., and John Mahard jr., late trading under the name and firm of J. & J. Mahard, having lately dissolved the said partnership, it is now agreed between the said parties, that the said John Mahard, sen., shall draw as much money from the stock and profits of said establishment as will pay for the lot and building, and finishing his dwelling-house on the corner of the corporation line and Spring street, in the city of Cincinnati, which he, the said John Mahard, senr., will receive as being in full for his share of stock and profits in said establishment, not including any part of the real estate of the said John Mahard, senr.; a part of which real estate the said John Mahard, senr., has this day sold and conveyed to the said John Mahard, jun., to wit, the lot, warehouse, and dwelling on the northeast corner of Water and Walnut streets, and also the *the* lot and warehouses on the southwest corner of Walnut and Water streets, reference being had to said deeds will more fully appear.

In consideration of which, the said John Mahard, junior, agrees to pay to the said John Mahard, senior, the sum of seven hundred dollars yearly and every year, as long as the said John Mahard, senior, shall live, in quarterly payments, to be made on the first Monday in March, June, September, and December, agreeably to a mortgage from the said John Mahard, junior, to the said John Mahard, senior, intended to secure the payment of the same. And it is further understood and agreed, that the said John Mahard, junior, shall collect all debts due and owing to said firm, and to pay all debts due and owing by said firm; and also shall convey to William Mahard the west half of the frame warehouse, with the ground whereon it stands, on the bank of the river, reserving the whole of the wharf to himself.

In testimony whereof the said parties have hereunto set their hand and seals this 15th day of February, 1837.

JOHN MAHARD, SENIOR, [SEAL.]
JOHN MAHARD, JUNIOR [SEAL.]

Signed duplicates in presence of—

Know all men by these presents, that I, John Mahard, junior, of the city of Cincinnati, in the county of Hamilton, and State of Ohio, am held and firmly bound to John Mahard, senior, of the city, county, and State aforesaid, in the sum of thirteen thousand three hundred and thirty-three dollars and one-third of a dollar, of good and lawful money of the United States, to be paid to the said John Mahard, senior, or his order; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal, dated the fifteenth day of February, in the year of our Lord one thousand eight hundred and thirty-seven.

The condition of this obligation is such, that if the above bounden John Mahard, junior, his heirs, executors, or administrators, do and shall well and truly pay, or cause to be paid, unto the above named John Mahard, senior, or his order, the sum of seven hundred dollars per year, in quarterly payments to be made on the first Monday of March, June, September, and December, yearly and every year, as long as the said John Mahard, senior, shall live, agreeably to a mortgage from the said John Mahard, junior, to the said John Mahard, senior, intended to secure the payment of the same, then this obligation to be void, or otherwise to remain in full force and virtue.

In testimony whereof I have hereunto set my hand and seal, the day and year above written.

JOHN MAHARD, JUNIOR. [SEAL.]

Sealed and delivered in presence of—
WM. BAXTER.

Received, Cincinnati, April, 20th, 1837, of John Mahard, senior, a deed, dated the third of March last, for the west half of the frame warehouse on the bank of the Ohio, between Walnut and Vine streets, and the ground on which it stands. In consideration of which I promised to pay, or cause to be paid, to the said John Mahard, senior, the sum of one hundred dollars per year, as long as the said John Mahard, senior, shall live, to be paid quarterly, on the first Monday of June, September, December, and March; for which payment, well and truly to be made, I do hereby bind myself, my heirs, executors, and administrators, firmly by these presents.

Sealed with my seal and dated the day and year above written.

WM. MAHARD. [SEAL.]

Execution No. 125, to November term, 1842.

FREDERICK TROW
vs.
JOHN MAHARD, sr., JOHN MAHARD, jr.

Damages - - - - - - -		$1,052 00
P. C. superior court - - - - -		13 95
Do. do. do. - - - - -		2 70
P. cost common pleas - - - - -		11 28
Do. do. do. - - - - -		2 57
Writ - - - - - - -		35
		1,082 85
Interest since 4th April, 1842, to 30th August, 1842, is -		25 91
		1,108 76
Ser. mile - - - -	75	
2 per cent. $1,000 - -	20 00	
1 per cent. ball. - - -	1 08	21 83
		1,130 59

Received, Cincinnati, August 30th, 1842, of John Mahard, senior, eleven hundred [and] thirty $\frac{59}{100}$ dollars, the amount of this execution in full.

JOHN C. AVERY, *Sheriff.*

The answer of Ferdinand Bodman to the bill filed against John Mahard, jr., him and others, by John Mahard, senior.

The said Ferdinand Bodman for answer to so much of said as he is advised it is necessary for him to respond to, says, that he knows nothing of the claim the complainant sets forth in his bill to 20 shares of *of* stock of the Franklin Bank of Cincinnati, part of the consideration money for real estate hereafter described, purchased from John Mahard, junior, by him, and requires proof of the same.

The respondent did purchase at the consideration of sixty-nine hundred dollars, to be paid for as follows, 49 shares of stock of the Lafayette Bank of Cincinnati, at par value, and 20 shares of stock of the Franklin Bank of Cincinnati, at par value, from John Mahard, junior, the following described real estate, being the same as described in said bill, in part, to wit:

All those four certain lots of ground, situate, lying, and being on the north side of George street, in L'Hommedieu's subdivision, marked B, in the city of Cincinnati, between John street and Western Row, beginning at a point on George street 164½ feet from *from* the northwest corner of Western Row and George street; thence running westwardly on the line of George street 105½ feet, to a point forty-five feet from the northeast corner of John and George streets; thence running northwardly, at right angles with George street, to an alley nineteen feet wide; thence

southwardly, on the south line of said alley 105½ feet, to a point 164½ feet from Western Row; thence southwardly, at right angles with the line of said alley ninety-five feet, to the place of beginning. The deed for same being recorded 13th day of September, 1841, in its book No. 82, page 192, Hamilton county records.

At the time said conveyance was made, there were the following judgments against the said John Mahard, jr.:

JAMES FERGUSON
vs.
JAMES R. BALDRIDGE, Samuel R. Hamilton, and John Mahard, jr.

Judgment, January term, superior court of Cincinnati, 1840, for $1,449 $\frac{80}{100}$, and costs of suit, upon which there has been paid the sum of 546 $\frac{00}{100}$.

FREDERICK TREOW,
vs.
JOHN MAHARD, jr., and John Mahard, sen'r.

Judgment at June term of the court of common pleas, 1841, for $1,000 $\frac{85}{100}$, and costs, which judgment was at the time appealed from to the supreme court.

JANE ROSS, administrator,
vs.
JOHN MAHARD, jr.

Judgment, July term of the superior court of Cincinnati, 1841, for $408 $\frac{70}{100}$, and costs.

THE PRESIDENT, Directors, and Company of the Bank of the United States, for use of James Dundas et als.,
vs.
JOHN MCLAUGHLIN, drawer, and John Mahard, jr., endorser.

Judgment, July term of the superior court of Cincinnati, A. D. 1841, for $2,728 $\frac{63}{100}$, and costs of suit; which said judgments were liens against said property above described, and other real estate owned at the time by said John Mahard, jr., in the county of Hamilton. This respondent, at the time said deed was delivered to him, transferred to the said Mahard 49 shares of the stock of the Lafayette Bank of Cincinnati, part of the consideration of said property aforesaid, at the par value of said stock; and the residue of said consideration money, to wit, 20 shares of stock of the Franklin Bank of Cincinnati, at par value, was not transferred, but was withheld by respondent to be transferred to said John Mahard, jr., so soon as the judgments, operating as liens and incumbrances on said property, should be released from said property or satisfied; which arrangement was made by the parties by the

advice of counsel; said 20 shares stock was and is held as collateral security on the covenants contained in said deed from John Mahard, jr., to him, so far as the judgments aforesaid operate against said property. This respondent has always been ready and willing to transfer said 20 shares stock of the Franklin Bank of Cincinnati to John Mahard, jr., or any other person authorized to receive said transfer, and is now ready, in case the said judgments aforesaid, which were liens against said property, shall have been paid and satisfied of record, or released from operating as liens against said property.

This respondent having answered, submits his rights to the court, and asks to be protected in the decree that shall, on the final hearing of said case, be made in the premises.

RIDDLE & ROLL,
Sols. for F. Bodman.

STATE OF OHIO, *Hamilton county, ss.*

Ferdinand Bodman makes oath and says, that the matters and things set forth in the foregoing answer are true, to the best of his knowledge and belief.

F. BODMAN.

Sworn to and subscribed before me, this 14th day of January, A. D. 1843.

ISAAC C. COPELIN,
Justice of the Peace. [SEAL.]

COMMONWEALTH OF KENTUCKY,
Kenton county and circuit, ss.

Northern Bank of Kentucky, complainants,
vs.
John Mahard, &c., defendants.
} In chancery.

Be it remembered, that on the 20th of July, 1842, the complainant, by his counsel, filed in the clerk's office of said court their bill against the defendants, in the words and figures following, to wit:

Bill.

To the honorable judge of the Kenton circuit court, in chancery sitting.

Your orators, the President, Directors, and Company of the Northern Bank of Kentucky, by Jas. M. Preston, their attorney, humbly complaining shew, that John Mahard and William Mahard, under the styles and firms of J. & W. Mahard, drawers, and Mahard & Brothers, acceptors, are indebted to your orators, as drawers and acceptors of a bill of exchange for 4,078 dollars 48 cents, on which Andrew Johnson and John McLaughlin are endorsers. And the said John and William Mahard are also indebted to your orators, under the style and firm of J. & W. Mahard, as drawers, and under the style and firm of Mahard & Brothers, as acceptors, on another bill of exchange, the other sum

dollars, on which said Johnson is endorser. And said John and William Mahard are also indebted to your orators, under the said style and firm of J. & W. Mahard, as drawers, and under the style and firm of Mahard & Brothers, as acceptors, on another bill of exchange, the other sum of 4,078 dollars 48 cents, on which the said Johnson is endorser. And said John and William Mahard, are also indebted to your orators, under the style and firm of J. & W. Mahard, as endorsers, and under the style and firm of Mahard & Brothers, as acceptors, on a bill of exchange, the other sum of 3,500 dollars, on which said Johnson and McLaughlin are endorsers; and all said sums of money are now due to your orators, and unpaid to them; and in order to secure said several sums of money the said John Mahard, on the 18th day of January, 1842, together with his wife, executed to your orators a deed of mortgage, now recorded in the clerk's office of the Kenton county court, a tract or parcel of land, lying and being in said Kenton county, and on Willow creek, on the Covington and Lexington turnpike road, near the said city of Covington, containing five acres three roods and nine poles, beginning at a stake 30 feet from the centre of said road, in a line of the Baptiste Education Society land, and near their corner, with York and Green's lot, &c., as further and fully bounded and described in said deed of mortgage.

Also another tract or parcel of land, lying and being in said county, near said city of Covington, beginning at a stake on the northern margin of said road, at the junction of a 20-foot street, running from Riddle's street to said road, as laid out by B. F. Bedinger and W. York, on the eastern side of said street; thence north 22¼ degrees west, with said 20-foot street, 292 feet, to a stake, &c., as further and fully bounded and described in said deed of mortgage; together with all the buildings and improvements on said tracts of land, with their appurtenances and appendages.

And said deed of mortgage, or a copy thereof, is made a part of this bill; and your orators now hold and own the said bills of exchange, described and recited in said deed of mortgage, or either bill or bills drawn and delivered by said persons in renewal of them, at futurity, and they make the said bills of exchange, now held and owned by them, parts of this bill, marked exhibits B. And your orators make said John Mahard, William Mahard, Andrew Johnson, and John McLaughlin, defendants to this bill, all of whom are non-residents of the State of Kentucky.

Now, therefore, in tender consideration of the premises, and as your orators can only be relieved in this honorable court, they pray that said defendants may be compelled full, true, and perfect answers on oath to make this bill, and that said lands, and buildings, and property, may be subjected to sale to pay your orators said sums of money and all interest due or to become due therein, and for such other and further and general relief in the premises as to equity belongs, and the Commonwealth's writ of subpœna; and they will ever pray, &c.

J. M. PRESTON,
Att'y for complainants.

And on the 20th of April, 1843, the complainants, by counsel, filed in the clerk's office aforesaid their amended bill against the defendants, in the words and figures following, to wit:

Amended bill.

To the honorable judge of the Kenton circuit court in chancery sitting.

Your orators, the President, Directors, and Company of the Northern Bank of Kentucky, by J. M. Preston, their attorney, in this amendment to their original bill filed herein against John Mahard, would shew, that since the said John and William Mahard became indebted to your orators, as stated in said original bill, and since said John Mahard executed said mortgage mentioned in said bill—which mortgage is dated the 13th day of January, 1842, to secure said four sums of money to your orator—the said John Mahard has become an applicant for the benefit of the Bankrupt law, and a decree of bankruptcy has passed against him, as your orators are informed and believe; and Nathaniel C. McClain, a resident of the State of Ohio, has been regularly appointed the assignee of all his rights, and credits, and property, real and personal; and, as your orators are advised, are now invested with the right and title to the equity of *of* redemption in and to said property, conveyed to your orators by said deed of mortgage. And your orators pray that said assignee may be made a party to this suit, and compelled to answer on oath the said original bill and this amendment fully and specially; and your orators pray, as in said original bill, and for general relief, and for the writ of s'pa.; and they will ever pray, &c.

J. M. PRESTON,
Attorney for complainants.

Order, warning.

20th July, 1842.

This day came the complainants, by counsel, and filed their bill; and it appearing to the court that the defendants, John Mahard, William Mahard, Andrew Johnson, and John McLaughlin, are no inhabitants of the commonwealth; and not having entered their appearance herein agreeably to law, and the rules of this court, it is ordered that said defendants appear here on or before the first day of next term, and answer the complainant's bill, and that the cause be continued.

Traverse.

20th October, 1842.

By order of the court, and in pursuance of the statute in such case made and provided, the facts and allegations in the complainant's bill, for the benefit and advantage of John Mahard, William Mahard, Andrew Johnson, and John McLaughlin, non-resident defendants, are admitted to be true; and all the allegations prejudicial to the interests of said defendants are deemed to be true, and the complainant put upon the full proof of the same; and the cause is continued.

Order, warning, &c.

20th April, 1843.

By leave of court the complainants, by counsel, filed an amended bill; and it appearing to the court that the defendant, Nathaniel C. McLane, is no inhabitant of this commonweath, and not having entered his appearance herein, agreeably to law and the rules of this court, it is ordered that said defendant appear here on or before the first day of the next term, and answer the complainant's bill, and that the cause be continued.

Traverse.

October 17th, 1843.

By the order of the court, and in pursuance of the act of assembly in such case made and provided, the charges and allegations in the complainant's bill, for the benefit and advantage of the non-resident defendant, Nathaniel C. McLain, are admitted to be true; and all the allegations prejudicial to the interest of the said defendant are deemed to be true, and the complainant put upon the full proof of the same; and the cause is continued.

Decree nisi.

April 18th, 1844.

This cause coming on to be heard on bill and exhibits, and it appearing that the defendants, all of whom are non-residents of Kentucky, have been regularly warned and regular traverses entered on their behalf, and the court considering that the proof is sufficient to sustain the complainant's demands, it is now ordered and decreed that the defendants, John Mahard and William Mahard, as acceptors, and the defendants, Andrew Johnson and John McLaughlin, as endorsers, pay to said complainants the sum of four thousand and seventy-eight dollars, and 48 cents, with interest from the 10th day of May, 1842, till paid at the rate of 6 per cent. per annum.

And also that said two Mahards, and said Johnson and McLaughlin, as acceptors and endorsers as aforesaid, pay to said complainants the further sum of three thousand five hundred, with like interest thereon from the seventeenth day of May, 1842, till paid.

And also that the said John Mahard and William Mahard as acceptors, and the said Johnson as endorsers, pay to said complainants the further sum of four thousand and seventy-eight dollars, 48 cents, with like interest thereon from the 4th day of April, 1842, till paid. And also that the said two Mahards as acceptors, and said Johnson as endorser, pay to said complainants the further sum of two thousand five hundred dollars, with like interest thereon, from the 14th day of July, 1842, till paid. And that the defendants pay to said complainants, their costs expended by them in this cause, and that said payments of said principal sums, interest, and costs, be made to said complainants on or before the first day of the next term of this court; and that unless said payments of said principal sums, interest and costs, be paid on or

before said day, the said lands and premises, in said complainant's bill mentioned, will be decreed and ordered to be sold, or so much thereof as may be necessary to pay said sums of money, interest and costs.

Certificate.

COMMONWEATH OF KENTUCKY,
Kenton county and circuit, ss.

I certify that the seven preceding pages contain a true copy of the bill in chancery, amended bill, orders of warning, traverses, and decree in the above mentioned cause, now pending in the Kenton circuit court.

In testimony whereof I have hereunto set my hand and affixed the [L. S.] seal of said court, at Independence, on the 18th day of July, 1844.

W. A. PENDLETON, *C. K. C. C.*
By CHAS. W. STEWART, *D. C., K. C. C.*

STATE OF KENTUCKY, *sct.*

I, James Pryor, sole judge of the circuit court for the county of Kenton, do certify, that Wm. A. Pendleton was at the date of the within certificate clerk of the Kenton circuit court, and that Charles W. Stewart was his deputy legally appointed. I further certify that the signature of Chas. W. Stewart, subscribed to said certificate is genuine, and that said certificate is in due form of law.

Given under my hand this 20th July, 1846.

JAMES PRYOR, *Ct. Judge.*

STATE OF KENTUCKY,
Kenton circuit court, sct.

Pleas before the hon. H. O. Brown, sole judge of the court aforesaid, on the day of July, 1845.

THE PRESIDENT, Directors & Co., of the Northern Bank of Kentucky, complainants,
vs.
JOHN MAHARD, William Mahard, &c., defendants.
} In chancery.

Be it remembered, that heretofore, to wit, at a court held for the county and circuit of Kenton on the 22d day of October, 1844, the following decree was rendered in the above cause:

It now appearing to the court that the said defendants, or either, or any of them, have not paid to said complainants the said sum of four thousand and seventy-eight dollars and 48 cents, with interest thereon, at the rate of six per cent. per annum, from the 10th day of May, 1842, until paid, or the said sum of three thousand five hundred dollars with like interest thereon, from the 17th day of May, 1842, until paid, or the said sum of four thousand [and] seventy-eight dollars 48 cents with

and interest thereon from the 4th day of April, 1842, until paid, or the said sum of two thousand five hundred dollars, with like interest thereon, from the 14th day of July, 1842, until paid, or the said costs expended by said complainants in this suit. It is now ordered and decreed by the court, that the said lots or parcels of land, with the houses and buildings thereon, and appurtenances and appendages thereto belonging, mentioned in said bill and mortgage, or so much thereof as may be necessary to pay said sums of money, interests and costs, be sold.

One of which parcels of land lies on Willow creek, in Kenton county, near the corporation line of the city of Covington, on the Covington and Lexington turnpike road, beginning at a stake thirty feet from the center of said road, in a line of the Baptist Education Society land, and near their corner with Yorke and Greer's lot; thence, with the margin of said road, south 77 degrees west, 17½ poles, to a stake thirty feet from the center of the same; thence south 1974 degrees east, 51¼ poles, to fence, part of the back line of E. S. Bush, deceased, being the line also of Richard Southgate's lands; thence with the line of said Southgate and said Bush, north 60 degrees east, 21½ poles to their corner, and in the line of said Education Society land; thence with the line of said Education Society land, north 24 degrees west, 46 poles, to the beginning, containing five acres, three roods, and nine poles.

And the others of said tracts lie in said county, on the said turnpike road, near the said city. Beginning at a stake on the northern margin of said road, at the junction of a twenty-foot street, (running from Riddel's street to said road, as laid out by B. F. Bedinger and W. Yorke, and on the eastern side of said street; thence north 22¼ degrees west, with said twenty-foot street, two hundred and ninety-three feet to a stake; thence north 67¾ degrees east, one hundred feet to a stake, corner to a lot sold to Joseph A. Keen; thence south 22¼ degrees east, two hundred and twenty-five feet to a stake in the margin of said road, and with the edge of said road, to the beginning. And A. H Jameson is appointed commissioner to make said sale, and he shall sell said property at public vendue to the highest bidder at a credit of six, twelve, and eighteen months, one third payable at each of those times, and shall take from the purchaser and purchasers bond, with good and sufficient security, to have the force and effect of replevin bonds, payable to the said complainants; and said sale shall be made on the premises between the hours of 11 o'clock, a. m., and 3 o'clock, p. m.; and said administrator shall advertise in writings the time and place of sale, for at least ten days next before said sale, at the court-house door in the town of Independence, and at two public places in the city of Covington, and shall insert the same advertisement 4 times in the Licking Valley Register, and a reasonable number of times in one or more of the newspapers published in the city of Cincinnati, and he may sell said property in parcels, if it can be best sold in that way; and he shall report his doings under this decree to some future term of this court.)

And afterwards, to wit, at a circuit court held as aforesaid, on the 21st day of April, 1845, until which time this cause was continued.

"The master commissioner made his report herein, which is ordered to be filed, and that he be allowed fifty dollars for his services herein." Which said report is in the words and figures following:

By virtue of, and in accordance with, the decree rendered in this cause at the October term, 1844, of the Kenton circuit court, I, Alexander H. Jameson, master commissioner of said court, proceeded to advertise, according to said decree, the time and place of the sale of the property in said decree mentioned, as follows, by one written advertisement at the court-house door of Kenton county; two written advertisements in public places in the city of Covington, and in the Licking Valley Register, and Kentucky Intelligencer, 4 weeks, and in the Gazette and Atlas, two newspapers published in the city of Cincinnati. And did on the day of sale, to wit, the 22d day of March, 1845, between the hours of 11 o'clock, a. m., and 3 o'clock, p. m., on the premises, proceed to offer said property for sale at public vendue. When, the complainants being the highest and best bidders therefor, became the purchasers for the sum of ten thousand dollars, (the amount of principal, interest, and costs, being $15,484;) no bonds were taken for the purchase money, the complainants being the purchasers. All which is respectfully reported.

A. H. JANESON,
April 21st, 1845. *Master comr., Kenton Ct. Ct.*

"The commissioner having returned this report of the sale of the mortgaged property herein, for the sum of ten thousand dollars, to the complainants herein, and said report having been confirmed; it is now ordered that the said complainants' costs in this suit expended, to wit, $102 17, be first paid of said sum, and said complainants having accounted for $1,346 30, as rents for said property received or to be received by them for said property, and $141 67 cents taxes on said property, paid by them, leaving a balance of $1,202 63 cents.

It is now ordered, that said balance of rents be deducted from the interest due on said principal sums mentioned in the decree herein, at the time of sale, and that the remainder of said interest be next paid out of said ten thousand dollars; and that the residue of said ten thousand dollars be appointed to pay off, as far as it will do so, the said principal sums in said decree herein mentioned."

"On motion it is ordered, that A. H. Jameson, master commissioner, execute to the complainants a deed of conveyance herein, and the cause is continued."

And afterwards, to wit, at a circuit court, held as aforesaid, on the 21st day of July, 1846, A. H. Jameson, master comm'r of this court, presented and acknowledged a deed of conveyance from John Mahard and Nathaniel C. McLean, assignee, &c., by said commissioner to the President, Directors & Co., of the Northern Bank of Kentucky, which

was examined and approved by the court, and ordered to be certified for record.

STATE OF KENTUCKY,
Kenton circuit court, sct.

I, Phil. F. Brown, clerk pro tem. of the circuit court aforesaid, do certify, that the foregoing decree, commissioner's report, and the orders of court succeeding them, are truly copied from the records of said court.

In testimony of which I have hereunto set my hand and affixed the seal of said court, this day of July, A. D. 1846, and in the year of the commonwealth the 55th.

[L. S.]

PHIL. F. BROWN, *Clerk*.

STATE OF KENTUCKY, *sct.*

I, James Pryor, sole judge of the circuit court for Kenton county, certify, that Phil. F. Brown is, and was at the date of the foregoing certificate, clerk of the Kenton circuit court, and that his signature to the foregoing certificate is genuine, and that said certificate is in due form of law.

Given under my hand this 21st July, 1846.

JAMES PRYOR.

Whereas, I, John Mahard, jr., late of the city of Cincinnati, and now of Springfield, Illinois, in May, 1842, applied for the benefit of the Bankrupt law, and, in pursuance of said application, assigned all my estate, real and personal, to Nathaniel C. McLean, my assignee in bankruptcy, to be applied to the liquidation of all my debts of every description, whether individual or of a partnership character, as well as the costs and charges of said proceedings in bankruptcy. And

Whereas, I believe that all my estate will not be more than sufficient, when exhausted, to satisfy my creditors:

Now know all men by these presents, that for sundry valuable considerations I have released, and do hereby release, to my said assignee in bankruptcy all and every part of any surplus of my estate as aforesaid, and by these presents do assign, and set over, and transfer to the said assignee all of said surplus, and do also fully exonerate and discharge him from all liability over to me, for any residue or surplus which may be coming to me out of the said estate now in liquidation, when it shall be settled, from the assignee aforesaid, or from, by, through or under any other person.

In testimony whereof I have hereunto set my hand and affixed my seal, this third day of September, A. D. eighteen hundred and forty-five.

JOHN MAHARD, JR. [SEAL.]

Signed in presence of—
JOHN D. URQUHART.

And afterwards, to wit, on the twenty-fifth day of November, being

at the November term of said court, in the year of our Lord one thousand eight hundred and forty-eight, came the parties by their counsel, and this cause came on for further and final hearing upon the bill, answers, replication, exhibits, evidence, the report of Edward D. Mansfield, and exceptions thereto; and the arguments of counsel having been heard and considered, the court do thereupon order, adjudge, and decree as follows, that is to say:

That the claim of John Mahard, senior, secured by mortgage upon lot No. 460, has been paid in full.

That the report made by the trustees of the Franklin Bank of Cincinnati, herein before filed, stating their account as receivers of said lot No. 460, be allowed and confirmed, as the same is made.

That in so far as the master, E. D. Mansfield, has reported that the penalty, allowed and given by the supreme court of Ohio, at its April term, 1842, on the judgment of the Bank of the United States against John Mahard, jr., and others, is a prior lien to the mortgages of the Franklin and Lafayette Banks of Cincinnati, his report is set aside; and the court decree, that said mortgages have priority of lien to said penalty, and that said judgment, with this exception, is entitled to be first paid, as reported by the master.

That in so far as the master has allowed interest on the entire claims of the trustees of the Franklin Bank of Cincinnati and the Lafayette Bank of Cincinnati, up to the 8th day of November, A. D. 1847, and beyond the day they became purchasers of their respective property, as found by a former decree, the report is in part set aside, and the court decree that interest be computed on the entire amount of said claims, up to the day of sale, January 4th, 1847, and that the same be credited as of that date, with the respective bids of said parties, to wit, the Franklin Bank claim with the sum of $19,333 34, and the Lafayette Bank claim with the sum of $13,867 34, and interest to be computed only on the balance of their respective claims from January 4th, 1847, to the present term.

That said master's report, in stating the amount of the bills held by the trustees of the Franklin Bank is correct, and the same is confirmed; and the same is also confirmed in its allowance of six per cent. damages on the face of said bills of exchange, and that the amount of said damages is in all fourteen hundred and eighty-six dollars and thirty-two cents.

That the entire claim of the trustees of the Franklin Bank of Cincinnati, including interest and damages, amounted on the 4th day of January, A. D. 1847, the day of their purchase, to the sum of $21,970 28, and that there is a balance, crediting the proceeds of the sale made to them, and without including the expenses allowed and to be deducted from them, and including all they have received at any time heretofore, and interest to this term, of twenty-nine hundred and thirty-three dollars and fifty-nine cents, which is unpaid.

That the entire mortgage claim of the Lafayette Bank of Cincinnati, including interest, amounted on the 4th day of January, 1847, the day

of their purchase, to the sum of $19,343 00, and that there is a balance, crediting the proceeds of the sale made to them, and without including the expenses allowed and to be deducted from them, and including interest to this term, of five thousand seven hundred and fifty-five dollars and eighty-five cents, which is unpaid; that this is the balance due upon their claim of $15,000 00 secured by their mortgage, and includes no part of their other claim, consisting of a bill of exchange for $3,420 00, and two notes for $162 00 each; and that the forty-nine shares of the capital stock of said Lafayette Bank, in controversy in this suit, were duly pledged for the payment and security of the mortgage debt of said bank herein found and granted for that purpose; and said bank have the first and oldest lien on the same for that purpose; and the court further decree that they apply the same, and the issues and proceeds thereof, as far as may be necessary, to the extinguishment and satisfaction in full of their mortgage debt as herein found.

The court further adjudges and decrees, that the trustees of the Franklin Bank of Cincinnati have a prior equity and the right to compel and force the judgment of the Bank of the United States against said J. Mahard, jr., and others, to seek and obtain its satisfaction and payment in the first instance out of the property included in the mortgage to the Lafayette Bank of Cincinnati; and if that be enough, that the Lafayette Bank of Cincinnati have only the right to have the excess of the proceeds of the property embraced in the Franklin Bank mortgage, over and beyond, and after the payment of the entire claim of the trustees of said Franklin Bank, and reasonable expenses and claims applied on said judgment. The court further find the proceeds of the entire property in the Franklin Bank mortgage are insufficient to pay the said claim of said trustees; that there is a balance due them after application of all of said proceeds, and without including expenses and costs to be deducted, of $2,933 59; that the amount credited on their claim on the 8th day of March, 1842, of $7,297 33, was the equivalent and full cash value of the Dyer property at the time it was released from their mortgage; that they are only chargeable with the cash value as of that date, and that the balance herein found is justly due and unpaid to them, after charging them with such value; and it appearing that there is no excess of proceeds in the hands of the trustees of said Franklin Bank, the court decree, that the President, Directors, and Company of the Lafayette Bank of Cincinnati, pay out of the proceeds of sales in their hands the entire amount of said judgment of the Bank of the United States as herein found; and the court find the amount of said judgment to be paid by said Lafayette Bank, excluding the penalty, and including interest to the first day of the present term, to be four thousand and twenty-one dollars and thirty cents, which, with interest from the first day of this term, the said Lafayette Bank of Cincinnati are decreed to pay to Dundas and others, representatives of the said Bank of the United States, or their solicitor, Vachel Worthington, within twenty days from the entry of this decree.

And the court decree that the costs of this suit shall be apportioned

as follows: The trustees of the Franklin Bank of Cincinnati, and the Lafayette Bank of Cincinnati, are to pay each one-half the entire amount of costs, expenses, and charges made in selling the real estate, amounting in all to $982 76, and the allowance to Mansfield, as master, amounting to $50 00.

In addition, they are to pay each one-half the costs credited in making them parties to this suit, such as the making and service of subpœna upon them, the costs accruing on their own pleadings, such as filing and copying the same, and the costs of the decrees which have been rendered, including this, such as the filing and entering the same, making in all the sum of $107 00, of which the trustees of the Franklin Bank are to pay $53 50, one half, and the Lafayette Bank of Cincinnati one half. The remainder of the costs, including $5.00 allowed Bernard Bradley for attendance as sergeant-at-arms during the time this cause was heard at court-house, in Cincinnati, amounting to $298 21, are to be paid by the complainant, out of the fund paid over to him by John C. Avery, pursuant to the decree of November term, 1847; and said complainant is decreed to apply the balance of said fund in payment of proper fees and charges incurred in this suit, and distribute the balance, if any, among the general creditors, as assignee simply of J. Mahard, jr., in the district court of Ohio, to which he is to make return of his doings in reference to the same.

The court further order Ferdinand Bodman, in whose name the twenty shares of the capital stock of said Franklin Bank of Cincinnati yet stand, to transfer the same to the trustees of said bank, to whom they were awarded by a former decree, in the proper form, within ten days from the entry of this decree.

The court further decree that the costs as herein apportioned be paid by the respective parties within twenty days from the entry of this decree, and in case of default by any or all of the parties in the punctual payment of said costs, or on the part of the President, Directors, and Company of the Lafayette Bank of Cincinnati, in the payment of the judgment herein decreed to be paid by them, the court award execution, as upon judgments at law, against the party so in default, to collect the same.

And the court having herein, and by its former decrees, disposed of and settled all the rights involved in this suit, and in controversy among the parties to the same, and nothing remaining for it to do in the premises, do hereby bring the suit to an end, and permit the parties to go hence with their rights, as herein and before found and confirmed.

And afterwards, to wit, on the thirty-first day of October, being at the October term of said court, in the year of our Lord one thousand eight hundred and forty-nine, "come the said John S. Buckingham and Mark Buckingham, and severally and jointly pray the allowance of an appeal from the final decree herein, and from the several interlocutory decrees, in so far as their rights and interests, several or joint, are in any way affected by the same."

And afterwards, to wit, on the second day of November, in the year

and at the term of said court last mentioned, the following order was made in this cause, to wit:

"The court here do allow the appeal*ed*, as prayed for in this term by the said John S. and Mark Buckingham; and the court certify, that the amount in controversy, in which the said John S. and Mark Buckingham are concerned, exceeds the sum of two thousand dollars, and direct the said appellants to give bond to the satisfaction of the clerk in the sum of $2,000, to cover the costs which may be decreed against said appellants."

And afterwards, to wit, on the third day of December, in the year last aforesaid, came the said John S. and Mark Buckingham, and filed in the clerk's office of said court the following appeal bond, to wit:

Know all men by these presents, that we, John S. Buckingham, Mark Buckingham, H. Debolt, and Joseph Raper, are held and firmly bound unto Nathaniel C. McLean, assignee in bankruptcy of the effects of John Mahard, jr., a bankrupt under the act of Congress, approved August 19th, 1841, entitled "an act to establish a uniform system of bankruptcy throughout the United States," in the sum of two thousand dollars; to the payment of which, well and truly to be made, we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators. Sealed with our seals, and dated this day of November, A. D. 1849.

The condition of this obligation is such, that whereas the said John S. Buckingham, Mark Buckingham, has taken an appeal from a certain decree, rendered in the circuit court of the United States, for the district of Ohio, at the November term thereof, A. D. 1848, in a suit wherein the said Nathaniel C. McLean, assignee as aforesaid, is complainant, and the President, Directors, and Company of the Lafayette Bank of Cincinnati, John S. Buckingham, and Mark Buckingham, and others, were defendants, to the Supreme court of the United States. Now, if the said John S. Buckingham and Mark Buckingham shall pay the full amount of the condemnation money in said Supreme Court, and costs, in case a decree shall be entered in favor of the appellee, then this obligation shall be void; otherwise to be and remain in full force and virtue in law.

JOHN S. BUCKINGHAM, [SEAL.]
MARK BUCKINGHAM, [SEAL.]
H. DEBOLT, [SEAL.]
RAPER & BROTHER, [SEAL.]
JOSEPH H. RAPER. [SEAL.]

(Endorsement.) "Approved. JOHN McLEAN."

THE UNITED STATES OF AMERICA,
District of Ohio, ss.

I, William Miner, clerk of the circuit court of the United States, for the district of Ohio, do hereby certify, that the foregoing, from page 1 to page 291 inclusive, is a correct transcript of the proceedings had in a